

Exhibit B

1
2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK
4 -----X
5
6 INDEPENDENT ASSET MANAGEMENT, LLC,
7 and OLA HOMSTROM,
8
9 Plaintiffs,
10
11 v. 1:07-CV-06431-JSR
12
13 DANIEL ZANGER,
14
15 Defendant.
16
17 -----X
18
19 April 17, 2008
20 10:22 a.m.
21
22 Deposition of GEORGE SZELE, taken by
23 defendants, at the offices of Jones Day, 222 East
24 41st Street, New York, NY 10017, before Jessica
25 L. Loschky, a Shorthand Reporter and Notary
Public.

1
2 STIPULATIONS
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4 IT IS HEREBY STIPULATED AND AGREED,
5 by and between counsel for the respective parties
6 hereto, that all objections, except as to form,
7 are reserved to the time of trial.
8 IT IS FURTHER STIPULATED AND AGREED
9 that the deposition may be signed and sworn to
10 before any officer authorized to administer an
11 oath.
12 IT IS FURTHER STIPULATED AND AGREED
13 that the sealing and filing of the deposition be
14 waived.
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2 APPEARANCES:
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4 BALESTRIERE, PLLC
5 Attorneys for plaintiffs
6 225 Broadway, Suite 2700
7 New York, NY 10007
8 BY: CRAIG STUART LANZA
9 WILLIAM HOLLEMAN
10
11
12 JONES DAY
13 Attorneys for defendant
14 222 East 41st Street
15 New York, NY 10017
16 BY: THOMAS H. SEAR
17
18 MICHAEL D. SILBERFARB
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1 Szele
2 GEORGE SZELE,
3 called as a witness, having been duly sworn,
4 testified as follows:
5 (IAM 006362 through IAM 006502 marked
6 Zanger Exhibit 41 for identification.)
7 MR. SEAR: Let me note a couple of
8 things for the record. The time is
9 approximately 10:20. Mr. Szele's
10 examination had previously been scheduled
11 for April 11th. We received notice in the
12 late evening the night before that he was
13 unable to attend. We have been invoiced
14 from the court reporter for \$150, which I'm
15 going to give counsel the bill and I'm
16 asking them to take care of this since it
17 was not our fault --
18 MR. LANZA: Sure.
19 MR. SEAR: -- for the cancellation.
20 Also, let me note for the record that
21 we received a letter from counsel for the
22 plaintiff on April 10th concerning the Rule
23 11 motion. We responded that day. Unless I
24 hear to the contrary today, I'm assuming
25 there will be no response back from counsel

1 Szele
2 for the plaintiff.
3 MR. LANZA: For the record, it's our
4 intention that we will respond to you
5 tomorrow by 5 p.m.
6 MR. SEAR: Thank you.
7 MR. LANZA: Also, some other things I
8 want to address. This is pursuant to our
9 agreement to bring our client back in light
10 of production of additional documents and in
11 light of the fact that there were some
12 incomplete questions as a 30(b)(6) witness.
13 In addition, some of the questions from
14 the last deposition related to accounting
15 questions, which my client has now made an
16 effort to, it being tax season, get personal
17 statements to address those questions. We
18 have -- to date we do not have those in
19 hand. Some of those questions will, again,
20 be incomplete, but we will follow-up with
21 them immediately upon receipt of them and
22 you should have them relatively soon.
23 MR. SEAR: Thank you.
24 EXAMINATION
25 BY MR. SEAR:

1 Szele
2 Q. Mr. Szele, let me show you what we've
3 marked as Zanger Exhibit 41. For the record,
4 it's a collection of documents bearing the Bates
5 numbers IAM 006362 through IAM 006502. A set of
6 these documents was provided to us by hand I
7 believe on March 21st by your counsel.
8 Do you recognize these documents?
9 A. You want me to go through each one?
10 Q. No. Let's go at it this way because
11 there are a number of documents.
12 A. So far I recognize them, yes.
13 Q. You were deposed on March 5th, 2008,
14 and we were then provided with these documents on
15 March 21. After your deposition, did you do
16 anything to search for any documents?
17 A. I have not had a chance. I have, if
18 you are aware, my wife's illnesses, my illnesses,
19 my children's illnesses. It's just been a
20 non-stop ordeal. We had our child the other day,
21 and I have not had a chance to go through
22 anything in detail. Just briefly I went over
23 some things.
24 Q. Did you provide any additional
25 documents to your counsel after your deposition

1 Szele
2 on March 5th?
3 A. I don't believe so. I may have. I'm
4 not sure.
5 Q. Well, do you have any explanation as to
6 why we received these documents on March 21st
7 about more than two weeks after your deposition?
8 A. I don't know why. You have to ask
9 them. They gave it to you?
10 Q. As I've indicated on the record, these
11 documents were provided to us by hand on
12 March 21.
13 A. I can't answer why they do things.
14 They are the lawyers. I let them do whatever
15 they feel they should be doing.
16 MR. SEAR: Could counsel make a
17 representation on that?
18 MR. LANZA: I can't at this time. May
19 I have a moment with my client? My
20 understanding is -- I can't make a
21 representation at this time. I need a
22 moment. May we have a moment?
23 MR. SEAR: Sure. I don't understand
24 why you can't tell me why we got these
25 documents on March 21st as opposed to well

1 Szele
2 in advance of his deposition. You are
3 telling me you can't answer that now without
4 conferring among yourselves?
5 MR. LANZA: I can't answer it because
6 I'm not the individual who produced those
7 documents.
8 MR. SEAR: Mr. Holleman in your offices
9 provided them to me after the deposition of
10 Mr. Zanger, and I might add, after -- some
11 of these documents were utilized at
12 Mr. Zanger's deposition before we had been
13 given copies of them.
14 MR. LANZA: These documents were
15 utilized in Mr. Zanger's deposition and have
16 not been provided to you?
17 MR. SEAR: There were documents from
18 this set of documents that were utilized at
19 Mr. Zanger's deposition that had not been
20 previously provided to us.
21 Now, Mr. Holleman, can you make a
22 representation as to why we received these
23 documents on March 21?
24 MR. HOLLEMAN: With regard to some of
25 the documents, we were reproducing them as

1 Szele
2 cleaner copies. I think some of the earlier
3 copies like the agreement had a lot of
4 markings on them. We wanted to produce the
5 documents without markings.

6 There were communications that earlier
7 there had been some formatting troubles and
8 for some -- I guess some sort of clerical
9 error that happened in our office, there was
10 an oversight, or there was some formatting
11 inconsistencies with the instant messages
12 that we had to iron out. I'm not exactly
13 sure as to why, assuming these messages were
14 not earlier produced, but there was
15 additional leg work that had to be done
16 through some inadvertent oversight I would
17 imagine.

18 A. Some of these documents were shown by
19 you to me in our deposition.

20 Q. No. For the record, these documents,
21 each page of these documents has a Bates number
22 on it. The page may be similar to another
23 document, but there is a reason why we Bates
24 number each page. Yes, there is a cleaner copy
25 of an agreement in here. There are also instant

1 Szele
2 and I had it that night we had to cancel before.
3 My wife has had bronchitis and major
4 difficulties during her pregnancy and I had to be
5 there for her. I can only do what I can
6 physically possibly do as a human being.

7 Q. Well, when you went through your
8 deposition transcript, did you see in any places
9 that you indicated you would make a search for
10 documents?

11 A. I believe said that I would look into
12 some things. I believe we actually asked
13 specifically what it is you want us to look into
14 as well being on a time constraint, and I don't
15 think it was provided by you. Specific --
16 anything I have to go back for specifically. We
17 asked -- I'm pretty sure they asked about giving
18 us a specific question or something that I need
19 to look into it.

20 MR. SEAR: Can we have this marked as
21 Zanger Exhibit 42.

22 (E-mails dated 4/9/08 marked Zanger
23 Exhibit 42 for identification.)

24 Q. For the record, this is a two-page
25 document that's a series of e-mails between

1 Szele
2 message that we hadn't seen before and there are
3 other documents we hadn't seen before.

4 Let me ask you this, after your
5 deposition on March 5th, did you do anything to
6 go out and go through the materials relating to
7 this case to answer any of the unanswered
8 questions that had been posed to you in your
9 earlier examination where you indicated you would
10 follow-up?

11 A. Like I said, I didn't have much time.
12 I have personal things going on, but I went
13 through my deposition a bit, I went through
14 Mr. Porco's deposition a bit, and then I listened
15 to Mr. Zanger and did that, went through a little
16 bit of that deposition, and then just recently I
17 went through a little bit of Mr. Zask's
18 deposition. That's all I really had time to do.
19 I haven't had time to do anything else.

20 You have to understand, we had a lot of
21 things going on in my family. It's just family
22 had to be a priority here. I'm not feeling well
23 actually. In fact, I have to use the restroom
24 every so often because I have a stomach virus. I
25 had a stomach virus last night, the night before,

1 Szele
2 Mr. Holleman and Mr. Silberfarb, my colleague,
3 who is here today and, in part, the document
4 contains an e-mail from Mr. Holleman to
5 Mr. Silberfarb on April 9th, 2008 in which he
6 says, "George is already reviewing whatever
7 materials he can so as to be prepared to answer
8 your questions on damages. As to the additional
9 documents, it would be helpful to know which ones
10 as best as you can say so he might be able to
11 better answer your questions. Thanks."

12 And then there is an e-mail back from
13 Mr. Silberfarb on April 10th to Mr. Holleman
14 setting forth the topics and open questions that
15 we intended to ask Mr. Szele about in his
16 deposition indicating the pages in his transcript
17 where he had represented that he would look for
18 information.

19 Were you informed of the pages from
20 your deposition transcript that we intended to
21 ask you about before you came here today?

22 A. No, but I told them that I was just
23 very preoccupied with my family at the moment so
24 I told them that I was going to research whatever
25 needed to be researched, you know, when I have

1 Szele
2 specifics and I have a bit more time and things
3 have calmed down a bit and we can produce
4 anything in specifics that needs to be produced,
5 but there are a lot of documents and a lot of --
6 I don't know the accounting. I would have to go
7 to the accountant. I'm sure that whatever you
8 guys need, I can get.
9 You know, I must say, there is a lot of
10 things that we requested as well from Mr. Zanger
11 that we never got that were relevant to his
12 trading track record, his history in the '90s.
13 We never got anything that I'm aware of, K-1's we
14 can get easily from the accountant.
15 Q. Let me show you what is a copy of the
16 transcript of your deposition. Let me direct
17 your attention to page 48, lines 14 through 22.
18 A. Where it says, "Let's stick with 2005"?
19 Q. Yes. Let me read it into the record.
20 "Question, let's stick with 2005. Have you ever
21 seen an e-mail from Goldman Sachs indicating that
22 any margin call that took place in 2005 as a
23 result of Dan's trading constituted a violation
24 of anything? Answer, I am not sure if there are
25 e-mails. They are in the e-mails I gave. Can

262

1 Szele
2 you point me to one? Answer, I would have to
3 look at the e-mails."
4 Are you prepared today to tell us
5 whether there are any such e-mails?
6 A. I am not. That would take a lot of
7 time for me to peruse e-mails, but I'm happy to
8 do it as soon as possible.
9 Q. When you say you are happy to do it as
10 soon as possible, within what time frame are you
11 prepared to do it in?
12 A. When my wife gets out of the hospital
13 and everything is okay with the baby and I have a
14 minute to not have to deal with the two other
15 kids as well as their needs and the family needs
16 and trying to make some money to pay the bills
17 and trying to borrow more money so I can just
18 survive, I can go on and on and on.
19 Q. Can you put a time frame on that?
20 A. I can try to get to it next week. I
21 can try -- I can try to get to it in the next
22 couple days. I just can't make any promises. I
23 can do the best I can. Again, I can only do the
24 best I can. I have obligations to a
25 seven-year-old, a four-year-old, my wife, we

1 Szele
2 can't afford help, we can't afford nannies, we
3 can't afford babysitters, we can't afford
4 anything, we live in a tiny house. I can't do
5 more than I'm humanly capable of doing. I can
6 only promise you I can do it as soon as I can.
7 Q. Let me direct your attention to page
8 202 of the transcript starting on line 6.
9 "Question, let me read you a statement that was
10 made in court to the judge in this case by your
11 counsel on October 4th, 2007." Mr. Lanza, page
12 7, line 5. Mr. Lanza, "Well, your Honor, it
13 would really be just requiring taking a look at
14 the e-mail exchanges from the prime broker to
15 IFL, specifically to Independent Asset Management
16 saying you are in violation of our rules. You've
17 done this 125 times or saying." The Court, "Do
18 they say that?" Mr. Lanza, "They do say that.
19 There are exchanges from a woman named Gia Nina
20 Arturo who works for Goldman Sachs who is
21 contently irate over these margin calls and they
22 were. Do you know what e-mail exchanges are
23 referred to in that statement? Answer, I would
24 have to find those e-mails. Question, do you
25 have any idea what e-mails are referred to there?

264

1 Szele
2 Answer, I have some idea. But to -- I would have
3 to find them to give you specific information.
4 What year did they take place? Answer, what
5 year, I would have to look. 2005, 2006. How
6 many such e-mail exchanges were there? Answer, I
7 don't know. I would have to look to count.
8 Would these be in the documents produced to us?
9 I would assume so."
10 As you sit here now, can you provide us
11 any information concerning what e-mails is
12 referred to or was referred to by Mr. Lanza in
13 the representation to the court?
14 A. There are definitely e-mails from Gia
15 at different times.
16 MR. LANZA: I'm going to object to the
17 question. You are asking him what my
18 motivation for my statement was.
19 MR. SEAR: No, I'm not.
20 MR. LANZA: You did. Do you know what
21 e-mail exchanges are referred to in that
22 statement.
23 MR. SEAR: And he says I would have to
24 find those e-mails.
25 MR. LANZA: Well, regardless, and we've

1 Szele
2 also provided an answer to that question
3 with references to Bate stamp numbers.
4 MR. SEAR: This witness represented
5 that he could find those e-mails. This was
6 on March 5th, 2008. Let's lay it right out.
7 Our position is that that was a false
8 representation to the court. It was false
9 then, it's false now. These 125 e-mails
10 don't exist.
11 MR. LANZA: There is no statement here
12 that there is 125 e-mails. I would like you
13 to point to where I say there is 125
14 e-mails.
15 MR. SEAR: Fine. I'm corrected. You
16 represented to the court that all it would
17 take was to just look at the e-mail
18 exchanges from the prime broker to IFL,
19 specifically to Independent Asset Management
20 saying you are in violation of our rules.
21 And I'm quoting -- you represented to the
22 Court. You've done this 125 times or saying
23 and the Court says, "Do they say that?" You
24 say, "They do say that."
25 Now, I asked this witness in his

266

1 Szele
2 deposition previously if he knew what those
3 e-mail exchanges were. He said I would have
4 to find those e-mails. He goes on to say,
5 "I would have to find them to give you
6 specific information."
7 Q. My question to you now is: As you sit
8 here now, can you give me any specific
9 information about those e-mail exchanges?
10 A. Okay. Have you seen the e-mail which
11 has a memo from Goldman Sachs saying violation,
12 violation, violation, violation? I think you
13 showed it to me in my deposition, did you not?
14 You even showed me the spreadsheet. That is a
15 representation -- there was a two-page memo from
16 Goldman Sachs via Gia in her back office which
17 states specifically these were the violations,
18 whatever times, 125 times, these were the ones
19 covered, these were the reg T, these were the
20 margins. They have a specific breakdown on the
21 spreadsheet. She gave us that. That is one of
22 her e-mails out of several where she expresses,
23 you know, lots of things and verbally she
24 expressed to me various things as well. This
25 can't go on, you know, obviously this is what is

1 Szele
2 going to cause shut down verbally on the phone
3 when I asked her, you know, what's going on.
4 Then I asked her specifically what kind of
5 violations these are and said these are NYSE
6 violations. There is a whole slew of e-mails
7 that I believe you have because I think you
8 showed it to me in my deposition.
9 Q. Let me show you Zanger --
10 A. That is the e-mail we are referring to
11 as one of them.
12 Q. Zanger Exhibit 28, this is a document
13 that was provided to me at 1:00 the day of your
14 examination. Take a look at that and let me know
15 if that's the first e-mail that you are referring
16 to.
17 A. This is one of the e-mails from Gia
18 that I'm referring to.
19 Q. Can you identify any other such e-mails
20 as you sit here now?
21 A. To my recollection, this is the
22 e-mail -- this is the only substantive e-mail
23 from Gia that actually gave us a full breakdown
24 of all the violations and the details of the
25 violations, which is what I requested from them.

268

1 Szele
2 When she said to me that there are
3 violations here over the years -- over the last
4 year '05 and '06. I said, "There are? How
5 many?"
6 That was the first time I was actually
7 made aware of the number of these. I was made
8 aware of some of them that Dan covered, like a
9 few of them, but I was never aware until this
10 time that there was this many of them that he
11 experienced.
12 Let me also say that -- so this
13 complete breakdown as she provides me is the only
14 one I received, as thorough as this, was this
15 day. This was the biggest one I ever received
16 and so clear and substantive of the information.
17 Q. As you sit here now, you can't refer me
18 to other such e-mails, is that correct?
19 A. I can find other e-mails where she
20 talks about violations, okay, but she has never
21 sent me an e-mail, to my recollection, that has
22 this much detail. There are other e-mails where
23 she sends that in a way -- in a tone that says,
24 okay, another violation, or -- you know, I have
25 to find that. I have to find those e-mails.

1 Szele
2 Verbally, also, she has said -- orally she also
3 said that, you know, we can't -- like if we asked
4 for money to be transferred that we needed to do
5 for a payment that was approved, then she said
6 that -- none of that can take place obviously
7 because Dan has another call or another situation
8 where your account can't move money.
9 Those were the instances where she had
10 also e-mailed me in the prior period, but I was
11 never aware of the number of them to this extent
12 until 2006.
13 Q. Let's look at the last two pages of
14 this.
15 A. Okay.
16 Q. Do you see there is reference there to
17 two call amounts with due dates of November 16th,
18 '06 and December 7th, '06?
19 A. Yes.
20 Q. Are these the day trading violations
21 that are referred to in the e-mail to the best of
22 your knowledge?
23 A. I think that's what she calls it, yes.
24 Q. Okay. Now, do you see for the margin
25 calls listed in the document that there are trade

1 Szele
2 Q. And there are also New York calls under
3 the type listed in one of the columns?
4 A. Yes.
5 Q. And for each of these calls, there is a
6 due date listed, is that right?
7 A. Looks like it.
8 Q. Do you have any information that would
9 in any way indicate that any of these calls,
10 putting aside the two-day trading violations that
11 are specified by the document, were any of these
12 margin calls not met by the due date listed in
13 this document?
14 A. Can you repeat the full question,
15 please?
16 Q. Let me rephrase it. I'm putting aside
17 the two-day trading matters set forth at the end
18 of the document. I'm directing your attention to
19 the margin calls specified in the rest of the
20 document where there is a house margin call, a
21 reg T call, or New York call. My question to you
22 is: Do you have any information that would
23 indicate that any of these calls were not met by
24 the due date listed in this document?
25 A. To my understanding, they were met.

1 Szele
2 dates and due dates listed?
3 A. Which page?
4 Q. Well, it's not Bates numbered.
5 A. The very first page?
6 Q. I think the sixth page in. The first
7 entry is a trade date of January 6th, '06. Do
8 you see that?
9 A. Yes.
10 Q. With a due date of January 11th, '06?
11 A. Yes.
12 Q. And if we go over to the next page,
13 does that indicate that that was a house call?
14 A. I believe so.
15 Q. And then there are other margin calls
16 that the key indicates were reg T calls?
17 A. I believe so if it says reg T.
18 Q. Well, if you look at --
19 A. Wherever it says "T," I assume it's reg
20 T.
21 Q. -- under type, is that correct?
22 A. That's what I would assume, yes.
23 Just for the record, no matter what
24 they are called here, what they are labeled, they
25 are all violations of our contract.

1 Szele
2 Q. They were met by the due date?
3 A. I believe so. I wouldn't know because
4 I wasn't aware of many of them until December of
5 '06, so I wouldn't have even known about some of
6 them because I wasn't informed by Dan like I was
7 supposed to about each one of these.
8 Q. Would it be your understanding that
9 this due date is the due date set by Goldman
10 Sachs for meeting the call?
11 MR. LANZA: Objection.
12 A. I would assume it's set by Goldman
13 Sachs because the memo is from Goldman Sachs, but
14 I'm not be 100 percent certain. It could be NYSE
15 rules, it could be Goldman rules. Gia several
16 times said these are NYSE violations and Goldman
17 Sachs violations so it's not just a matter of a
18 due date issue here.
19 Q. Now, there are a number of pages
20 listed --
21 A. I just want to make one more thing very
22 clear. I hope it's on the record that every
23 single one of these violations, whether you call
24 them violations or house calls or NYSE, I was
25 supposed to be informed by Mr. Zanger on each and

1 Szele
2 every one of these instances per my contract with
3 him, and he never once informed me. That's very
4 important to note.
5 Q. Okay. Now, if I was to go through the
6 other areas of your transcript where you
7 indicated that you would need to look for
8 information, would it be fair to say that you
9 have not had the opportunity to obtain that
10 information since your deposition?
11 A. I have not for the reasons already
12 mentioned.
13 Q. Let me show you what we've previously
14 marked as Zanger Exhibit 15, a copy of the
15 amended complaint in this action. I'll direct
16 your attention to the tabbed page. That's the
17 Goldman Sachs Execution & Clearing, L.P. That's
18 the heading on it. It's Customer Futures and
19 Option Agreement. Do you see that?
20 A. Yes.
21 Q. And if we go to the last page of that
22 document, is that your signature?
23 A. Yes.
24 Q. Are you aware of any other documents
25 setting forth any house rules of Goldman Sachs

1 Szele
2 A. That specify the rules and regulations?
3 Q. Yes.
4 A. Not that I can recall right now.
5 Q. Let's take a look at Zanger Exhibit 41,
6 which is the collection of documents provided to
7 us on March 21.
8 Can you tell us what the first page
9 reflects that is Bates number 6362?
10 A. It's a statement from Butterfield Bank.
11 I'm not sure I get these. I think these go
12 directly to the client. I get a different report
13 I think, but this one I think goes directly to
14 the client from the administrator.
15 Q. Look at Bates page 6368, which is
16 headed Redemption Notice. Can you tell us what
17 that is? I'm including the next page 6369, which
18 appears to be apart of the same document.
19 A. Yes. It looks like the redemption
20 form.
21 Q. Do you have any knowledge or
22 information as to what redemption is referred to
23 therein?
24 A. I'm sorry. I don't understand the
25 question.

1 Szele
2 that were applicable to the trading of the IFL
3 account beyond this agreement?
4 A. I'm sorry. Repeat that.
5 (Record read)
6 A. I'm sure there is other documents. My
7 partner Joe filled out some documents at the
8 outset I believe to set up the account for
9 Independent Fund. I'm sure they are out there
10 somewhere. I can't be sure that they are out
11 there.
12 Let me just say this, to my
13 understanding Mr. Porco took care of setting up
14 the account for Independent Fund Limited and
15 whatever Goldman Sachs needed or we needed, you
16 know, the information was exchanged somehow or
17 else they never would've allowed us to start
18 trading.
19 Q. Beyond the documents that set up the
20 account and this agreement, are you aware of any
21 other Goldman Sachs' rules or regulations that
22 were applicable to the trading that you can
23 identify?
24 A. Any documents?
25 Q. Yes.

1 Szele
2 Q. Do you have any knowledge or
3 information as to what redemption is reflected in
4 this document?
5 A. It's Mr. Zanger's redemption, Victory
6 Lane.
7 Q. And this was a redemption that took
8 place in October of 2006?
9 A. That looks like the redemption date,
10 yes.
11 Q. And what do you recall about the facts
12 and circumstances about that redemption, if any?
13 A. You are going to have to specify that a
14 bit more. What circumstances?
15 Q. What do you know about this redemption?
16 Do you know anything about this redemption?
17 A. Yes. He wanted to redeem his capital.
18 I mean, I really don't know what you are wanting
19 me to respond to. I don't know what you are
20 specifically referring to.
21 Q. I'm asking for your knowledge about the
22 redemption. Beyond your testimony that he wanted
23 to redeem his capital, do you have any
24 information or knowledge that relates to this
25 redemption?

1 Szele
2 A. Besides that he wanted to redeem his
3 capital, I don't know how else to answer your
4 question. I'm sorry. He wanted to redeem his
5 capital and wanted to do it against the contract
6 that we agreed. I mean, it's opposite of what
7 the contract says he is allowed to do, my
8 contract.
9 Q. Were you a director of Independent
10 Fund?
11 A. Yes.
12 Q. And as a director of Independent Fund
13 in 2006, did you take any action to oppose or
14 disagree with any redemption by Mr. Zanger of his
15 shares in IFL?
16 A. You mean on the telephone or e-mail or
17 any -- in any way?
18 Q. In any way.
19 A. There is an e-mail in late 2006, which
20 I believe we've already shared, talking about
21 that. There were conversations saying we're
22 going to -- him saying we should talk about --
23 this is in 2006 -- him talking about we are going
24 to have to come up with a new plan here. We are
25 going to have to discuss this contract that we

278

1 Szele
2 signed together when he wanted to redeem also for
3 his taxes.
4 Then there were conversations, and I
5 would have to check the IM's too, but there were
6 definitely conversations with him telling him
7 that he can't put money in directly, and he can't
8 take money out directly from Goldman Sachs
9 account. You have to do this through proper
10 channels, which he kind of just disregarded.
11 To the best of my recollection, you
12 know, those were the extent of any significant
13 conversations, but I definitely expressed to him
14 my dissatisfaction of, you know, whenever it went
15 below five million, or that I was concerned about
16 something. He would either brush it off or not
17 be available or whatever. He has a way of sort
18 of ignoring things.
19 Q. Did the directors of IFL approve all
20 the redemptions that Dan actually did?
21 A. Depends how you define "approve"
22 because there is technically a way to approve by
23 signature, but do we approve of it as part of the
24 overall contract, no, we didn't approve of it in
25 that sense.

279

1 Szele
2 As far as technical signature, did we
3 approve it, yes, we approved the redemption. You
4 really don't have the right to not approve a
5 redemption as a director. You are basically
6 forced to allow a redemption if the investor
7 wants his money back per the offering memorandum,
8 per the rules of the Bermuda law. There is no
9 way we could've said no.
10 Q. Let's look at the Bates number 6372,
11 that and the next page 6373. Is that a so-called
12 instant message?
13 A. Yes.
14 Q. This one is dated May 9th, 2006?
15 A. Looks like it, yes.
16 Q. And how were these instant messages
17 retained?
18 A. There is a save function. I just saved
19 -- I just hit the save button to a file.
20 Q. In your computer?
21 A. Yes.
22 Q. And what did you do in terms of
23 collecting the instant messages that had been
24 produced here in this case? Were you the one
25 that did the search for them?

280

1 Szele
2 A. Did I search the instant messages?
3 Q. No. Let me --
4 A. I'm sorry.
5 Q. Okay. What was done in connection with
6 producing the instant messages that were produced
7 in this case? What process was followed?
8 A. If I understand your question
9 correctly, my answer is, I took all the instant
10 messages that I had saved and provided them to
11 counsel.
12 Q. So as far as you know, we have been
13 provided with all of the instant messages that
14 exist of conversations between you and Dan?
15 A. What I know is that I provided them
16 everything I have.
17 MR. SEAR: Let me ask counsel, do we
18 have all of the instant messages that exist
19 between Mr. Szele and Mr. Zanger concerning
20 the matters at issue in this case?
21 MR. LANZA: We handed over everything
22 that's been provided to us. Apparently
23 there was some sort of glitch that caused us
24 to produce additional ones, but we provided
25 everything that we have.

1 Szele
2 Q. So, Mr. Szele, did you print out hard
3 copies of these messages and provide them to your
4 counsel?
5 A. No. I saved them on a file and
6 transferred it. I believe everything was done
7 electronically.
8 Q. Okay.
9 A. There may have been one or two that I
10 printed out, but most of them, to my
11 recollection, were electronically transferred.
12 Did you want me to respond to this.
13 Q. Let me direct your attention to Bates
14 6379. Is this an instant message of August 30,
15 2005?
16 A. It looks like it, yes.
17 Q. And so the record is clear, when we say
18 this is an instant message, is this a computer
19 conversation that you had with Mr. Zanger from
20 time to time as opposed to a telephone
21 conversation?
22 A. This is through Yahoo Instant
23 Messenger. This is something Dan wanted. Dan
24 liked this a lot.
25 Q. And is Mr. Zanger listed in this and

1 Szele
2 Q. And he indicated to you that it was
3 about 37 million, is that right?
4 A. That's what he says, yes.
5 Q. And did that include, or exclude the
6 money under management of IFL?
7 A. My understanding is that that was his
8 total -- my understanding is he was saying that
9 his total assets under management was 37 at that
10 time.
11 Q. That would include approximately five
12 million, or something a little bit more that was
13 in IFL?
14 A. I think it was a little bit more in IFL
15 at that point because he made some money.
16 Q. So that would be roughly 32 million,
17 give or take?
18 A. Around 30, 32, yes, in that range.
19 Q. Let me direct your attention to the
20 Bates page 6380. Is that an instant message
21 between you and Dan of March 23, 2006?
22 A. Looks like it, yes.
23 Q. And you say, in part, "Looks like we
24 have 1.1 mm coming in April 1."
25 Is the "mm" million?

1 Szele
2 other instant messages as Chart Pattern?
3 A. That's right.
4 Q. And you are GB Szele, G-B S-Z-E-L-E?
5 A. That's right.
6 Q. Let me read part of this. "GB Szele,
7 Dan, can you give me the total assets under your
8 management including all accounts personal and
9 fund? It's about 40 million? Chart Pattern,
10 about 37. Chart Pattern, mil. GB Szele, K. I'm
11 putting 35 into PowerPoint to be conservative."
12 Does this reflect the fact that you
13 understood that he had about \$40 million under
14 management as of August of 2005?
15 A. Repeat the question. I'm not sure --
16 I'm not sure I'm understanding the question. I
17 think I'm clear on it, but I'm not understanding
18 it. Are you asking me if I was thinking that
19 it's \$40 million of his assets on August 30th?
20 Was that my belief?
21 Q. Yes.
22 A. I think it was my guess that he was
23 around that number at that time.
24 Q. And --
25 A. That's why I put a question mark there.

1 Szele
2 A. Yes.
3 Q. And below that Mr. Zanger says, "Nice
4 regular meaning margin," is that right?
5 A. I have no idea what he is asking here,
6 but right now I'm trying to figure out -- okay.
7 I see what he is referring to. Yes, I believe he
8 was wanting it to come into his Class Z where
9 there is no one-to-one situation, meaning there
10 is leverage allowed.
11 Q. Do you say, "Yeah, Class Z is where all
12 the money is - Class Z2 is the one with no
13 margin/leverage."
14 A. That's what I wrote.
15 Q. And that was true?
16 A. Class Z2 was in the process of being
17 set up so I was making it clear to him, again,
18 that obviously we are going into Class Z, but we
19 want to set up Class Z2 because it could be
20 institutionally more friendly to have his
21 strategy that doesn't utilize leverage.
22 By the way, if he would've listened to
23 me on that, he probably would've gotten 30 to 50
24 million from an investor in Western Connecticut
25 that said, you know, we would've invested in him

1 Szele
2 if he didn't have a 20 percent drawdown.
3 Q. Can I have the exhibit in front of you,
4 41.
5 For the record, I'm going to mark
6 another copy of this because the copy I have has
7 handwritten notations of mine. I'll mark a clean
8 copy.
9 Let me direct your attention to Bates
10 page 6389 and ask if that's an instant message
11 between you and Dan dated November 10th, 2005?
12 A. It looks like that.
13 Q. And am I correct that you first asked
14 Dan, and let me quote, "Dan, at the end of
15 October about how many total investors do you
16 have (approx) and how much assets (40 mil)"?
17 Did I read that right?
18 A. Yes.
19 Q. Was that your question to Dan?
20 A. Yes.
21 Q. The does he respond, "about 43 mil"?
22 A. Yes.
23 Q. And does he then say, "50 investors"?
24 A. Yes.
25 Q. And you say, "Thanks"?

1 Szele
2 into Westwood," is that right?
3 A. Yes. That's right and I followed up
4 with a question mark.
5 Q. And what was Westwood as of that point
6 in time?
7 A. His domestic fund.
8 Q. Does Dan then say, "He said he has
9 plenty of money offshore and was only interested
10 in the onshore at this time. No, the trader
11 raised 800 K for me total. Paul was 200 K." And
12 then he says, "Another 100 K," is that right?
13 A. Looks like it, yes.
14 Q. Do you then say, "Excellent. It's all
15 good to grow you"?
16 A. Yes.
17 Q. Does he say, "Another 250 K"?
18 A. Yes.
19 Q. Do you say "excellent" again?
20 A. Yes.
21 Q. Does he say, "Yep"?
22 A. Yes.
23 Q. And do you say "excellent" a third
24 time?
25 A. Yes.

1 Szele
2 A. Yes.
3 Q. Does he say, "Plus or minus"?
4 A. Yes.
5 Q. And then does he say, "Why"?
6 A. Yes.
7 Q. Do you know what the "why" indicates?
8 A. No. I assume it indicates yes.
9 Q. Let me direct your attention to Bates
10 page 6392.
11 A. Which one? Sorry?
12 Q. 6392. Is that an instant message
13 between you and Dan dated March 1, 2006?
14 A. Looks like it, yes.
15 Q. And let me direct your attention down
16 to the entry for 11:25:14 a.m. where Dan is
17 saying, "I told him I have two funds, one on and
18 off. He chose the onshore."
19 Do you see that?
20 A. I do.
21 Q. Did you say, "What did he say about
22 that?"
23 A. I see that.
24 Q. Did he say, "That is wanted -- the
25 on -- that was all"? And you say, "He put 800 K

1 Szele
2 Q. When you are saying --
3 A. It's very odd that I don't recall
4 saying excellent three times like that, but I
5 guess it is what it is.
6 Q. The three excellents, what are they
7 referring to?
8 A. Growing his assets, growing assets in
9 general is good for everyone.
10 Q. These were assets that were growing in
11 his Westwood fund, is that correct?
12 A. Yes. I believe these were assets in
13 the Westwood. Whether or not he used his access
14 to my offshore fund to help him raise money
15 domestically is another question so I think that
16 would need to be addressed down the road.
17 Q. Let me direct your attention to Bates
18 page 6408. Is this an instant message between
19 you and Dan dated February 16th, 2006?
20 A. Yes. Looks like it, February 16th,
21 '06.
22 Q. And the third entry from Dan, is he
23 saying -- it's W-H-E, but am I correct that it
24 is, "When are you giving me my 4 mil?" He says,
25 "I need it right now"?

1 Szele
2 A. Yes. It looks like he is referring to
3 "when."
4 Q. And do you say, "Yes. BFS is working
5 on it right now. It doesn't happen overnight,
6 Dan"?
7 A. Yes.
8 Q. Do you then say after a couple comments
9 by him, "When did you get them the actual
10 redemption doc?"
11 A. Yes.
12 Q. Do you next say, "I'll call them again
13 to make sure"?
14 A. Yes, I see that.
15 Q. Do you later say, "We told them to
16 speed it up"?
17 A. Yes.
18 Q. Had you told BFS to speed up the
19 redemption?
20 A. I'm sure I did.
21 Q. And BFS, so we are clear on that, is
22 that Butterfield?
23 A. Butterfield Fund Servicing.
24 Q. And that's the administrator of the
25 Fund?

1 Szele
2 Q. Was that your true belief as of
3 January 3rd, 2006?
4 A. Performance-wise, yes. Actual trading
5 performance-wise as a result on a return, yes, I
6 thought that was good.
7 Q. When you say, "You had a great year,"
8 was there any aspect about anything Dan had done
9 in 2005 that was inconsistent with having a great
10 year?
11 A. I was referring to the performance.
12 The performance was a great year. Had I known
13 that he had all these violations, I may not have
14 thought it was a great year. Had he, you know --
15 I mean, it was a great year in terms of
16 performance --
17 Q. Well --
18 A. -- relative to the market.
19 Q. You used the words, "You had a great
20 year," is that right?
21 A. Yes.
22 Q. Do you qualify that anywhere in this
23 instant message?
24 A. I don't think I qualify it in this
25 instant message, no.

1 Szele
2 A. That's right. I tried to go out of my
3 way to help Dan when he asked me to.
4 Q. Let me direct your attention to 6409
5 and ask you if that's an instant message between
6 you and Dan dated January 3, 2006?
7 A. Looks like it, yes.
8 Q. And is the first comment on this
9 instant message by you?
10 A. Yes, it is.
11 Q. Do you say, "Happy New Year, my man!
12 How are you feeling?"
13 A. Yes, that's what I wrote.
14 Q. And is there a discussion of certain
15 personal matters in the instant message then?
16 A. If you are referring to my father and
17 his secretary, yes, I guess you can say that's
18 personal.
19 Q. And then you make a comment concerning
20 his performance for 2005?
21 A. I'm sorry. Could you repeat the
22 question?
23 (Record read)
24 A. If you are referring to you had a great
25 year, yes.

1 Szele
2 Q. Are you aware of any instant message or
3 e-mail or any other document that indicates that
4 Mr. Zanger did not have a great year in 2005 in
5 any respect at all?
6 A. Like I said, the performance is a great
7 year. Had I known about some of these other
8 things, I might have said it's a good year, you
9 know. There is information I was not aware of
10 when I said that.
11 Q. As you sit here now, can you refer me
12 to any instant message or e-mail or document that
13 indicates in any way that Mr. Zanger did not have
14 a great year in any respect with regard to his
15 trading in IFL?
16 A. Not that I can recall right now.
17 Q. Do you then -- does he say, "Yes,
18 thanks to you"?
19 A. He does.
20 Q. And then did you ask him, "What is the
21 estimate for Westwood?" And does he say, "About
22 98 percent"?
23 A. Yes.
24 Q. What does the 98 percent refer to, to
25 the best of your knowledge?

1 Szele
2 A. His return for the year in Westwood,
3 which was 30 percent higher than the return in
4 the Fund, so in that respect, it wasn't a great
5 year. That's what I was referring to before.
6 Q. Well, are you aware of any instant
7 message or e-mail or document that indicates that
8 you felt that some comparison with his Westwood
9 performance indicated that he did not have a
10 great year with respect to the trading in IFL?
11 A. Actually, I definitely had a
12 conversation with Mr. Zanger about this saying
13 that I wish he would've put in his money at the
14 end of December, beginning of January like he
15 said he would so he wouldn't have missed out on
16 the 30 percent, that he would've had the same
17 result in the offshore fund that we had in his
18 domestic fund had he done what he said he was
19 going to do, which is put all the money in, the
20 five million, in the beginning of January or end
21 of December like he promised so I did comment to
22 him on that.
23 Q. Can you point me to an instant message
24 or e-mail or other document that reflects that
25 such a conversation took place?

294

1 Szele
2 A. I would have to look at the IM's. I
3 can't recall right now.
4 MR. SEAR: Why don't we take a break
5 and let's chat during the break.
6 (Recess)
7 MR. SEAR: While we were off the record
8 I discussed with counsel for the plaintiff
9 the issues relating to the questions that
10 were posed of this witness at his initial
11 deposition examination in which the witness
12 indicated, in substance, in various spots in
13 the transcript that he would look for
14 certain documents or look for certain
15 information.
16 I raised with counsel the fact that the
17 witness testified on the record and his
18 testimony is what it is. I'm not purporting
19 to characterize his testimony, but I think a
20 fair take on it is, is that for the reasons
21 he articulated, he came here today
22 unprepared to go through those types of
23 questions because he had not looked for the
24 documents or information for those
25 unanswered questions in those instances

1 Szele
2 where he indicated he would look for
3 information. He just wasn't ready to do
4 that here today.
5 I raised with counsel for the plaintiff
6 the issue of what their position was going
7 to be relative to whether Mr. Szele would
8 voluntarily come back prepared to go through
9 those items. Those items were items that we
10 had specified by page numbers in the e-mail
11 that we marked here today as exhibit number
12 42, Zanger 42.
13 My understanding is that counsel for
14 the plaintiff is committed to getting back
15 to us by the end of the day tomorrow with
16 their position on that issue.
17 MR. LANZA: That is correct.
18 A. If I may just address two points from
19 previous.
20 Q. No. If your counsel wants to ask you
21 questions at the end of the deposition, that's
22 fine.
23 Let me direct your attention to 6412.
24 Is that an instant message exchange between you
25 and Mr. Zanger dated January 25th, 2005?

296

1 Szele
2 A. Which one?
3 Q. 6412?
4 A. Sorry. What is the question?
5 Q. Is this an instant message exchange
6 between you and Mr. Zanger dated January 25th,
7 2005?
8 A. I believe so.
9 Q. Take a look at that. My question to
10 you is going to be if this deals with matters
11 relating to his sending money into the Fund?
12 A. Okay.
13 Q. Does this deal with the matter of
14 Mr. Zanger wiring money into the Fund for his
15 shares?
16 A. It deals with that and the amount of
17 damage it's taking from him to get the money in
18 there, too, dealing with that, too.
19 Q. Let me direct your attention to the
20 entry for 11:03:03 a.m. Is that a statement by
21 you?
22 A. I believe so.
23 Q. You say, "I'll alert Anthony to get
24 ready to wire to Class Z shares Bermuda. How
25 much are you wiring now and how many tranches?"

1 Szele
 2 A. Looks like I wrote that, yes.
 3 Q. Does he say, "Many tranches"?
 4 A. He says "trenches," but, yes, I assume
 5 he means tranches.
 6 Q. What is a tranche?
 7 A. I assume in a different segment.
 8 Q. Okay. Does he say, "Nothing today.
 9 Maybe tomorrow. The next day to start. Can't
 10 unwind my eBay or Google shorts while they are
 11 breaking down so hard, would cost me too much
 12 money. I'm unwinding my lower beta stocks right
 13 now. It's half of what I have"?
 14 A. I see that, yes.
 15 Q. You say, "Okay, your call"?
 16 A. Yes.
 17 Q. Let me direct your attention to 6416.
 18 A. I also make it clear to him how much of
 19 a waste that was and how much difficulty that
 20 actually proved to be to us to raise money. I
 21 made it very clear down here, which is part of
 22 the great question that we were talking about
 23 earlier, why I didn't think it was so great, '05.
 24 Because he told me he was going to have the money
 25 in at the end of December, January 1.

298

1 Szele
 2 Q. Is there any document that reflects
 3 such a commitment on Mr. Zanger's part?
 4 A. I would have to go back and try to find
 5 it.
 6 Q. Will you do that?
 7 A. Yes, I will.
 8 Q. Let me direct your attention to 6416.
 9 A. Which one?
 10 Q. 6416.
 11 Is that an instant message exchange
 12 between you and Mr. Zanger dated January 6th,
 13 2005?
 14 A. It looks like it, yes.
 15 Q. And let me direct your attention to the
 16 entry for you for 3:45:11 p.m. Do you see that
 17 at the bottom?
 18 A. Yes.
 19 Q. Do you say to him, "Dan, are we in
 20 agreement that if I raise you money in the US
 21 domestically, that we have the same agreement as
 22 offshore." It's spelled M-E-N-A-I-N-G, but,
 23 presumably, it's, "meaning 25 percent of all
 24 fees?"
 25 Is that a question by you to Dan?

1 Szele
 2 A. It looks like it.
 3 Q. What are you referring to there?
 4 A. That if he gets assets into Westwood,
 5 that I have a similar compensation. In other
 6 words, if he -- whether he gets an investor who
 7 like this gentleman that he got that we mentioned
 8 in our earlier IM that comes in and let's say he
 9 learned about it through my offshore fund and I
 10 get some sort of -- I may be eligible to get some
 11 sort of a fee, which is similar to our agreement
 12 with the offshore.
 13 It's only fair when you are raising
 14 money for offshore, you are bound to have cross
 15 currents of investors that may want to come in
 16 your domestic and your offshore. Having offshore
 17 fund, in and of itself, helped Dan to raise money
 18 domestically and, therefore, I should be getting
 19 paid something for that, or be eligible to get
 20 paid something for that.
 21 Q. Were you asking him to get paid for
 22 that if you raised money in his domestic fund?
 23 A. If assets came into his domestic fund
 24 through any of my efforts, my affiliation, then I
 25 would be eligible to get paid a fee. That's what

300

1 Szele
 2 I was asking him for.
 3 Q. Incidentally, this IM and the IM before
 4 it that's dated January 2005, looking at the
 5 substance of it, is it possible that these IM's
 6 were generated in early 2006 instead of early
 7 2005?
 8 A. It's possible. There are some sort of
 9 an electronic -- it's doubtful. I would say
 10 these are probably accurate. If you show me one
 11 specifically --
 12 Q. Is it your understanding that the
 13 January 6th, 2005 notation at the top is
 14 generated by the system?
 15 A. Well, that was the date I assume that
 16 Yahoo IM had placed on the IM.
 17 Q. Let's look at 6422.
 18 A. It could though also be a function of
 19 saving the -- when you are saving this to the
 20 file, there is a functionality in the computer
 21 that also will date it I think. There is a date
 22 for Yahoo, and there may be a date when you are
 23 actually saving the file so there could be, you
 24 know, I guess there is room for a potential
 25 glitch there.

301

1 Szele
2 Q. Let me direct your attention to 6422
3 and ask if that's an instant message between you
4 and Dan dated December 14th, 2005?
5 A. Looks like it.
6 Q. And in the entry for 9:45:27 a.m., were
7 you telling Mr. Zanger that he had had an
8 excellent month in his trading for the Fund?
9 A. Looks like it, yes.
10 Q. Are you aware of any instant message or
11 e-mail in which you indicated in words or
12 substance to Mr. Zanger that his trading for the
13 Fund had breached the agreement between him and
14 IAM?
15 A. I would have to look. I'm not sure.
16 Q. As you sit here now, can you point me
17 to any one such instant message or e-mail?
18 A. Where I specifically say you
19 violated --
20 Q. Yes.
21 A. I can't point to one right now. I'm
22 not sure that I did.
23 Q. Let's look at the Bates number 6435.
24 Is that page 2 of an instant message from
25 November 4th, 2005?

302

1 Szele
2 A. Looks like it, yes.
3 Q. And do you see the entry for 12:00:56
4 p.m. from you?
5 A. Which one?
6 Q. 12:00:56 p.m.?
7 A. I see it.
8 Q. Do you say, "I'll try to get more
9 people also to meet with us when you are here.
10 Frankly, a lot of people are afraid of your
11 volatility, but then some aren't and they want to
12 watch you a little longer. Maybe by new year
13 they will be comfortable."
14 Did you say that to him?
15 A. Looks like it.
16 Q. Did he respond, "My two-year record
17 very impressive, very sorry three years since
18 December '02. Westwood is up some 600 percent
19 since then."
20 Did he say that back to you?
21 A. Looks like it.
22 Q. Then do you say, "I agree. Very
23 impressive." Then you go on to say, "You must
24 understand that people are afraid of getting in
25 before you drop 20 percent, 30 percent. That is

303

1 Szele
2 just the nature of the human, right?" And he
3 says, "Sure is?"
4 A. Yes.
5 Q. Did that reflect your true belief about
6 his prior performance as of November 2005?
7 A. Some of it, yes. I can get into that a
8 lot more.
9 Q. What I'm saying is, what you said to
10 him, is that a true statement of your belief?
11 A. That is a true statement of my belief,
12 yes. It's part of my belief, but that's a true
13 statement of my belief.
14 Q. Let's look to the next page. Do you
15 see the entry for 12:10:22 p.m. from you?
16 A. 12:10 -- which one?
17 Q. 22 p.m.?
18 A. Okay.
19 Q. Does that set forth a statement by you
20 to him?
21 A. I believe so.
22 Q. Do you say to him as of this date,
23 November 4th, 2005, and I quote, "Remember, you
24 are considered a gunslinger in some ways. Some
25 people want and love that. We'll find them."

304

1 Szele
2 Did you say that to him?
3 A. Yes.
4 Q. Was --
5 A. Looks like it.
6 Q. Was that a true statement of your
7 belief as of November 2005?
8 A. That we would find them at some point
9 if he stuck to the agreement, yes, I definitely
10 thought that was true at that time, yes. It
11 wasn't going to happen in one day or one year or
12 two years though.
13 Q. When you say, "Remember, you are
14 considered a gunslinger in some ways," was that a
15 true statement in your belief as to his trading
16 approach?
17 A. Actually, yes, someone had just told me
18 that they saw him as a gunslinger so, yes.
19 Q. Did your view as to the fact that he
20 was considered a gunslinger in some way change at
21 all from November 4, 2005 up through the end of
22 2006?
23 A. I don't think so. Not materially.
24 Q. Let me direct your attention to the
25 Bates pages 6438 and 39 and ask you what they

1 Szele
2 are, if you know?
3 A. You said 6438 and 39?
4 Q. Yes.
5 A. Yes, I believe this is a report or a
6 summary from the Fund administrator going through
7 the NAV's for Dan's specific classes and series
8 of shares.
9 Q. When you say "NAV," what are you
10 referring to?
11 A. Net asset value.
12 Q. So looking at, say, the entry for
13 1/31/2005 where it says a thousand, what does the
14 thousand refer to?
15 A. That's just what they start with, that
16 number.
17 Q. So do the different numbers here, one
18 two and three, reflect the different times when
19 money was put in?
20 A. No. This is a net asset value at the
21 end of each month for each class and series of
22 shares, which was Dan's.
23 Q. Well, what is the difference between,
24 say, S1 and S2?
25 A. S1 was Series 1, meaning the first

306

1 Szele
2 tranche that Dan invested. Series 2 was the next
3 tranche. Then he tried to move money out so they
4 to creat a Series 3 tranche to help him so he
5 wouldn't get hit with a redemption fee. We
6 actually did these different series as to help
7 him not to have redemption fee, which I waived
8 redemption fee to help him again based on his
9 mistake of wiring money in and out directly from
10 his account.
11 Q. At the top the entry is S401, what does
12 that refer to?
13 A. You have to ask the administrator. I'm
14 not sure what that refers to.
15 Q. Let's go to the next page, 6439. You
16 see there is four entries. It looks like
17 Independent Class T01.
18 A. I'm sorry. I believe S4 refers to the
19 other series they created for him to help him
20 with the redemption and putting it back in on
21 10/31. Each time they moved money, they created
22 a new series in that effect.
23 What did you ask?
24 Q. There is four entries. It likes like
25 Independent Class T01. Do you see them?

1 Szele
2 A. Yes.
3 Q. Do you know what those entries refer
4 to?
5 A. That's our new investor that came in
6 for another class of shares in February of '07.
7 Q. When did that investor leave?
8 A. We wound that up in basically
9 September, October of '07.
10 Q. Who managed the trading of the Fund
11 while that investor was in?
12 A. Who managed the trading of the
13 strategy?
14 Q. Yes.
15 A. Another manager.
16 Q. Who was that?
17 A. Top Water.
18 Q. When did Top Water come in?
19 A. February of '07 -- you mean Top Water
20 came in as manager, or the investment?
21 Q. No, the manager. When did Top Water
22 come in as a manager?
23 A. When did we hire them? I think we
24 wrote an agreement in '06, early '07. I would
25 have to check the exact date, but they were the

308

1 Szele
2 new manager that we had that we were going to
3 work with as well.
4 Q. How much money was invested by this new
5 investor?
6 A. 1.5 million, I believe.
7 Q. Was the trading of those moneys
8 successful?
9 A. It was quite successful. The trading
10 actually itself was quite successful. The
11 manager was quite good.
12 Q. How much money was in the Fund when
13 those moneys were redeemed?
14 A. I would have to check exactly. I don't
15 know, but that manager was up every single month
16 very conservatively so they are considered quite
17 good.
18 Q. Do you have any recollection of how
19 much money that manager made in '07 while this
20 investor had moneys in the Fund approximately?
21 A. I don't. I would have to look at the
22 audit, the Fund audit. I don't know exactly. I
23 mean, it was minimal. After fees -- you know,
24 it's very expensive so they got operating fees,
25 administration fees, it all affects the

1 Szele
2 investment. One of the reasons they left is
3 because Zanger wasn't there. He was supposed to
4 be there with his five million. Had he been
5 there with his five million, like he said he
6 would, this investor wouldn't have been hit with
7 the fees, which gets prorated, distributed to
8 each investor so it hurt -- this relationship was
9 redeemed and hurt because specifically Zanger's
10 withdrawal from the Fund.

11 Q. Were the fees calculated as a
12 percentage of assets in the Fund?

13 A. Which fees?

14 Q. The fees you just referred to in your
15 answer?

16 A. There are expense fees, administration
17 fees, and operating fees per the offering
18 memorandum. These get expensed prorate to the
19 investors.

20 Q. When you say "prorate" to the
21 investors, what do you mean?

22 A. If you put in \$100 and I put in \$1,000,
23 10 percent of the expenses get prorate to the
24 100, and the 90 percent get allocated to the 900.

25 Let's say -- okay, you have 900. You

310

1 Szele
2 represent 900 out of 1,000 in a Fund and I
3 represent 100. Ten percent goes to me of the
4 fees as prorate, of my prorate portion of my fees
5 and expenses.

6 When that big investor leaves like
7 Zanger left, all the expenses goes to one guy so
8 he can't absorb it. It makes the investor
9 withdraw. He can't pay all the fees and
10 expenses. The Fund is too small.

11 Q. Were there fees charged to this
12 investor beyond the percentage of the amounts
13 invested in the Fund?

14 A. I'm not sure what you are saying. Were
15 his fees larger than his investment in the Fund?

16 Q. No. Was there a management fee charged
17 to that investor, the investor that came in '07?

18 A. To the new investor, yes, we waived the
19 management fee for him. He had operational and
20 administrative fees, accrual of legal and
21 accounting, all that stuff.

22 There is a whole slew of fees that get
23 accrued each month per the offering memorandum.
24 It's detailed in the offering memorandum. And
25 because Mr. Zanger left with his five million,

1 Szele
2 this investor had to absorb all that and got
3 smacked causing us more damage.

4 Q. Are you aware of any documents
5 reflecting any of these matters that you've just
6 talked about? I'll tell you, I haven't seen any
7 in the production.

8 A. First of all, the whole thing was
9 unwinding at the end of '07. We just got the
10 audit just now for -- we just completed the 2007
11 audit, so I have to get you a copy of that. I
12 can get a copy of that and that will detail a lot
13 of that on this Class T.

14 Other than that, I don't know what else
15 to provide. I think I already mentioned in the
16 deposition that you had with me previously that
17 we did have a Class T, we did have a new
18 investor. I think that was explained, if I
19 recall correctly.

20 Q. Let's look at 6440, which is
21 denominated the Independent Fund Limited. Below
22 that it looks like IAM, Independent Asset
23 Management. Let me ask you if this document
24 continues to and includes 6470.

25 A. Okay.

312

1 Szele
2 Q. Is that the last page of this document?

3 A. Looks like it.

4 Q. What is this document?

5 A. It's a very generic discussion piece.
6 It was probably really just put together to start
7 talking to some potential investors. A generic
8 PowerPoint.

9 Q. Looking at page 6443, there is
10 reference there to the "global pattern
11 recognition model." What does that refer to, if
12 you know?

13 A. That's actually my model that I had
14 developed.

15 Q. And did IAM have any success in
16 obtaining investors through the utilization of
17 this document?

18 A. I'm trying to think, this is dated
19 July '04. I'm not sure if this was actually
20 handed out as a final PowerPoint to really
21 anyone. I don't know. As far as raising any
22 money directly from this document, I can't say
23 for sure if this document was shown to anyone
24 else and we got some money in. I just can't
25 recall.

1 Szele
2 Q. As you sit here now, can you identify
3 any investor that came in as a result of the
4 utilization of this document or the matters set
5 forth therein?
6 A. You got to remember, some of this
7 information has been moved over to other
8 PowerPoints so part of this probably helped raise
9 money, and part of it probably helped raise money
10 in the past. I raised five million for GPRM in
11 2002. That did quite well so pieces of this in
12 the past raised money, pieces of this in the
13 future raised money, and then some of it was
14 taken out. I mean, there is a couple of -- I
15 think there is a couple modifications here.
16 Q. When you say "in the future," what are
17 you referring to?
18 A. Well, some aspects of this kept going
19 on into other PowerPoints I think.
20 Q. What money was raised after 2004
21 besides Mr. Zanger's --
22 A. I can't tell you, for example, that Dan
23 didn't look at this and say, oh, okay, and this
24 helped raise money with him. I don't know. I
25 don't know if he saw this or not.

1 Szele
2 Q. Do you have any recollection of you
3 providing that to him?
4 A. I provided him a PowerPoint. I don't
5 know which one.
6 Q. Is there another PowerPoint than this?
7 A. I would -- there are other versions of
8 PowerPoints, but somewhere in the past and,
9 again, pieces of it -- there may be another one
10 after that. We were working on one with Dan,
11 which was the whole marketing effort, where he
12 was giving us -- he was working on giving us his
13 track record audited and put together in a format
14 and put it into PowerPoint.
15 There is a PowerPoint that they
16 approved using, Dan and his accountant, Jeff, but
17 I would have to pinpoint where that is exactly.
18 MR. SEAR: Has that been produced to
19 us?
20 MR. HOLLEMAN: Yes, I believe so.
21 MR. SEAR: I would ask for the Bates
22 numbers on that then.
23 MR. HOLLEMAN: Specifically which
24 PowerPoint are you requesting?
25 MR. SEAR: The PowerPoint that the

1 Szele
2 witness just referred to, whatever that is.
3 A. There is a PowerPoint that we worked on
4 that Dan approved and Jeff approved, his
5 accountant, and I believe that was completed
6 in -- I have to check exactly. I believe that
7 was completed in -- I have to check exactly when
8 it was completed.
9 MR. SEAR: I'm just asking. I'm not
10 aware of it. That doesn't mean that it
11 wasn't produced. I don't have an
12 encyclopedia of the documents. If it's been
13 produced, I would appreciate the Bates
14 numbers being provided to us.
15 MR. HOLLEMAN: Sure.
16 BY MR. SEAR:
17 Q. Let me direct your attention to 6481.
18 Is that an instant message between you and Dan
19 dated May 18th, 2006?
20 A. What is the number again?
21 Q. 6481.
22 A. It looks like May 18th, '06.
23 Q. And is there reference here -- do you
24 make reference here to the RCA material?
25 A. Okay. I see that.

1 Szele
2 Q. Is that the material you talked about
3 before?
4 A. I'm not sure what you are referring to.
5 Q. You testified previously about RCA. My
6 question to you is: Are you referring to the
7 same material here as you did in your earlier
8 testimony, not here today, your earlier testimony
9 the first time?
10 A. If RCA is utilized as a word, then I'm
11 referring to the same RCA, yes, there is only one
12 RCA that was involved with us. Yes, only one
13 RCA.
14 Q. Okay. And on this date you tell Dan at
15 2:42:14 p.m., "You are doing a great job hanging
16 onto dough in the last day or so, nice." And Dan
17 says, "K." And you say, "Good for marketing and
18 record," is that true?
19 A. I did say that.
20 Q. Let me direct your attention to 6497
21 and ask you if that's an instant message between
22 you and Dan dated September 21, 2006.
23 A. Looks like it, yes.
24 Q. Let me read the entry for you for
25 3:06:49 p.m., "Dan, are you busy? If, yes, can

1 Szele
2 we set a time tonight to talk/wrap up our new
3 agreement because I've got to get these things
4 resolved. Plus I need to work on figuring out
5 the infrastructure issue in the Miami office.
6 Thank."
7 What are you referring to there?
8 A. I'm not sure. I believe -- I believe
9 it was to talk about more working capital, to
10 talk about how he wants to proceed. I assume it
11 also has to do with -- we were thinking about
12 setting up another office. I think we were going
13 to try to set up another office. That's to the
14 best of my recollection.
15 Q. When you say "wrap up our new
16 agreement," what new agreement are you referring
17 to?
18 A. Like I said, I think it's referring to
19 the additional working capital agreement that I
20 was requesting that we come up with a plan how,
21 you know, he wants to, you know, how he wants to
22 move forward with, you know, the needs we have to
23 continue I think. I think that's what it was
24 referring to. We were talking about more working
25 capital and, you know, how we go forward because

318

1 Szele
2 he was having these drawdowns and he had
3 complained about -- he complained about, you
4 know, how he thought he was getting -- he thought
5 I was getting paid off of his money. He made
6 these ridiculous accusations about, you know, he
7 thought that I was just making money off of him,
8 so I think it is referring to a new agreement
9 about that and also possibly even the RCA
10 situation so I can't recall exactly. That's what
11 I think it is. That's to the best of my
12 knowledge or recollection.
13 Q. How much more money were you asking
14 from Dan?
15 A. I don't recall exactly.
16 Q. Was --
17 A. I don't recall.
18 Q. Was IAM having trouble paying its bills
19 as of September 2006?
20 A. No. I think we were starting to run
21 out of capital, working capital. We were still
22 paying the bills, but starting to run out of
23 capital. I mean, Dan several times said let's
24 discuss a new situation or new agreement, you
25 know, in verbal conversation. He said let's sit

1 Szele
2 down and talk about it, and I said, yeah, that we
3 should do that. He often said things, but never
4 followed up or just ignored it after a while or
5 forgot about it so I think that he probably
6 wanted to also discuss, you know, what is the
7 best way to move forward with the issues of his
8 drawdowns and things like that.
9 Q. Was the idea of a new agreement yours,
10 or his?
11 A. I think the working capital need was on
12 our part, and I think maybe he wanted to talk
13 about some sort of a new arrangement, discuss the
14 current arrangement.
15 Q. Why do you think that?
16 A. Because he said things like, I'm not
17 happy you are making money off of me.
18 Q. Beyond that, did he indicate that he
19 desired any new agreement?
20 A. Well, you can just sort of tell. His
21 tone gets a little bit more sharp I would say,
22 and certainly his conversations with me got a
23 little more sharp as he was I think also
24 frustrated with his drawdowns and the fact
25 that -- I guess he expected we would raise money

320

1 Szele
2 like that overnight and that just wasn't
3 realistic.
4 I can't tell you everything he was
5 thinking, but from the brief conversations we
6 had, he wasn't -- he was wanting to come up with
7 some sort of a new situation, and he knew we
8 needed more working capital because I told him
9 we're going to need more working capital.
10 Q. Did you tell him you needed more
11 working capital so you can pay your bills?
12 A. I told him we needed more working
13 capital for marketing purposes, for IAM to
14 continue to pay its bills, and to continue the
15 effort, the same, you know, what we agreed on.
16 Q. Is it fair to say that you were anxious
17 to have him put up this additional capital?
18 A. Well, I would've liked to come up with
19 a solution where he is happy, we're putting up
20 more capital, and we give him, say, a percentage
21 more of IAM. He had a percentage of IAM anyway
22 so he was just going to get a little more
23 percentage of IAM. My point was to make him
24 happy and make us continue on to try to raise the
25 money, which I think we could have over time.

1 Szele
2 Q. Let me direct your attention to 6499.
3 Is that an instant message exchange between you
4 and Dan?
5 A. Looks like it, yes.
6 Q. Do you initiate the interchange at 8:30
7 and 48 seconds a.m.?
8 A. 8:30?
9 Q. Yes.
10 A. Which Bates number?
11 Q. 6499?
12 A. I'm sorry. I see the IM.
13 Q. Do you say, "Hey, Dan, you are on a
14 margin call. Can you resolve that this a.m. as
15 soon as possible, please. Thanks"?
16 A. At 8:30 and at 10:31.
17 Q. So you repeated it at 10:31?
18 A. Yes. He didn't respond for two hours
19 so I figured I would try again.
20 Q. Did he respond to you then at 10:31,
21 15 seconds a.m.?
22 A. Looks like it, yes.
23 Q. So he responded ten seconds after your
24 second instant message?
25 A. Looks like it.

1 Szele
2 Q. Did he say, "Done"?
3 A. That's what he writes.
4 Q. Then did you say at 10:45:49 seconds
5 a.m., "Good month. Look out though, market may
6 turn soon," and he responded, "K"?
7 A. Looks like that's what's there.
8 Q. And do you understand "K" to be okay?
9 A. I do.
10 Q. Let me direct your attention to IAM
11 6500 and ask you, first, is that an instant
12 message between you and Dan on October 26th,
13 2006?
14 A. Looks like it.
15 Q. What does this refer to in substance?
16 A. I think it's referring to the money he
17 had moved out of his account and tried to wire it
18 and then he tried to get it back. He had to fill
19 out docs for the administrator so everything was
20 done officially and properly. That's what docs
21 refers to, but then it gets into other matters
22 like RCA.
23 Q. Let me direct your attention to the
24 entry of 2:02:56 p.m. from Mr. Zanger. He says,
25 "When does that wire go out?"

1 Szele
2 Do you see that?
3 A. Yes. I do see that.
4 Q. You then you say, "Okay. Told you at
5 month end. They can't do it any other way."
6 What are you referring to?
7 A. That's probably the amount of money
8 that he -- again, money I believe -- this is to
9 the best of my recollection, but I believe he
10 wired in money to cover something directly, which
11 he shouldn't have done, then he had to fill out
12 documents per the administrator which caused
13 further problems, and then he expected to get his
14 money back right away, like he always did.
15 That's why he capitalizes it. "When does that
16 wire go out?" That was his chief concern, his
17 issue, and his questions.
18 He was obviously getting impatient that
19 money didn't get to him as quickly as he hoped
20 from the administrator, which they can't do. It
21 has to be processed by the end of the month
22 according to the standard administrator, you
23 know, process. That's what I believe it refers
24 to, that improper wire activity.
25 Q. Let me show you Zanger Exhibit 13.

1 Szele
2 It's denominated First Supplement to Plaintiff's
3 Response to Defendant's First Set of
4 Interrogatories. I direct your attention to page
5 2 of this document. Do you see that there is an
6 entry that begins Lost Fees?
7 A. Yes. I see it down here.
8 Q. And then the fees are broken down into
9 two forms of fees on page 3, Lost Management Fees
10 and Lost Performance Fees?
11 A. Yes.
12 Q. And can you tell us how the Lost
13 Management Fees set forth therein were
14 calculated?
15 A. The management fee that I'm to get and
16 Dan is to get is -- were issued, allotted 1
17 percent of assets under management. If you have
18 50 million under management, then the annual
19 management fee in total is 500,00 for each
20 person, for Dan and for us. You multiply that by
21 about three for three more years that was left on
22 the contract, so that's a management fee.
23 Q. Is that management fee calculation
24 based upon your position that Dan was supposed to
25 place \$50 million into IFL?

325

1 Szele
2 A. I thought Dan was going to place 50
3 million and then, according to his testimony, we
4 were going to raise another 50 to 200. That
5 calculation is actually very small. Yes, that is
6 based on that.
7 Q. When you say "that is based on that,"
8 this calculation is based upon the allegation
9 that Dan was obligated to put in the \$50 million,
10 is that right?
11 A. The management fee is based on the 50
12 million, this number is.
13 Q. When you say "this number"?
14 A. 50 million. 50 million in management
15 fees equates to about 1.5 in lost management fee.
16 Q. So the \$1.5 million is based upon the
17 \$50 million, is that right?
18 A. That's for three years, yes, but it
19 could have been five, six, seven, eight years or
20 more if we are doing what we are supposed to do
21 here on all sides.
22 Q. The Lost Performance Fees, you see
23 there is a calculation there?
24 A. Yes.
25 Q. Is that calculation also based upon the

326

1 Szele
2 allegation that he was obligated to put in the
3 \$50 million?
4 A. It's a number that's based on 50
5 million.
6 Q. Okay. Let's look at the lost trading
7 revenue. Do you see that calculation set forth?
8 A. Yes.
9 Q. How is that calculated?
10 A. That is the amount of trading we
11 could've made on my own trading. Dan wanted to
12 use my model to create revenue as well. We
13 talked about this quite a bit. He actually
14 placed 100,000 into a futures account,
15 Interactive Brokers, for me to trade, so he was
16 obviously interested in -- it's part of our
17 agreement that we can both raise assets for all
18 our strategies. That was clear from the
19 beginning that that might happen.
20 I mean, that's a minimum. I was
21 actually telling these guys that I had a small
22 trading account last year in June. I'm up 300
23 percent. It could've been far, far greater than
24 that. My trading is kind of like the opposite of
25 Dan's, mine can do very well when his doesn't do

327

1 Szele
2 so well, so we were anticipating a potential
3 hedge with he and I together being uncorrelated.
4 This is something we were hoping to
5 raise money for as well so Dan put 100,000 into
6 Interactive Brokers, which I was trading on the
7 futures account so he could see how it worked. I
8 actually made three percent for him on that while
9 he was losing money during that period. I mean,
10 that's just a tiny minimal number of the
11 potential trading revenue that we could've earned
12 on my trading as well.
13 Q. So the \$100,000 is set forth there --
14 A. The five million.
15 Q. Pardon?
16 A. Yeah, that's based on I guess the five
17 million, if the five million were in there.
18 Q. So how is the \$100,000 calculated?
19 A. I would have to look exactly back at
20 how I calculated that, but it's basically --
21 it's -- I would to look at my spreadsheet that I
22 did it on. I can get that to you as well if you
23 want the exact calculation. It's based on my
24 percentage of profit, based on my performance
25 that I cut in half, you know, by multiples to be

328

1 Szele
2 very conservative. I'm sure I gave them a
3 formula so I would have to get that.
4 Q. I take it you can't explain that
5 calculation to us here today, is that right?
6 A. No. I'm telling you it's a percentage
7 of the profits on an X percent of profitability
8 over a certain amount of time. I'm not sure
9 exactly how I have it in the spreadsheet, but
10 it's based on a performance of the trading -- of
11 my trading.
12 Q. Have you given us all the information
13 you have here today concerning the calculation of
14 that \$100,000 in alleged damages?
15 A. I would like to go back to my
16 spreadsheet and look how exactly I come up with
17 that, but I think it's extremely conservative.
18 MR. SEAR: This is the second time
19 we've had exactly the same sort of testimony
20 where the witness has indicated he was
21 unable to do a calculation at the
22 deposition. He indicated he wanted to go
23 back and look at his spreadsheets and
24 produce them to us and so forth.
25 A. Well, I've given you information on the

1 Szele
2 management and performance fees, which you asked
3 me last time so I've given you that. It's not
4 quite exactly the same in the deposition. On the
5 100,000 I can give you the exact calculation. I
6 don't have a calculator in front of me. If you
7 want to give me a calculator, I'll look at
8 exactly how I figured it out.

9 Q. What did you do to prepare the
10 yourself --

11 A. Or take the 100,000, Mr. Sear, and our
12 damages would still be in excess of 10 to \$20.
13 You can take it out, but it's still in there as
14 trading revenue that I could have. I can tell
15 you that Mr. Zask will tell you the same thing, I
16 could've made millions on my strategy with Mr.
17 Zanger on that strategy that I had that even
18 Mr. Zanger liked, otherwise he wouldn't have put
19 100,000 into it of his money.

20 Q. The information technology cost, the
21 \$20,000, how would those damages calculate in?

22 A. Very conservative again. The amount of
23 money it cost to move around from service
24 provider to service provider. It's across the
25 board. Everything from the guys that we have to

1 Szele

2 BY MR. SEAR:

3 Q. Now, the next item is IAM's unpaid
4 debts. It lists \$690,595 in debts. When were
5 those debts incurred?

6 A. Some were incurred early -- I mean,
7 actually I think it's higher. I think it's 8 or
8 900,000. This was incurred over a period of
9 three years, four years. We had some sea unit
10 holders that were brought in 2002, 2001 and then
11 a couple others over time, but it's kind of
12 spread out over a period of time.

13 Q. Is that from 2001 going forward?

14 A. Approximately -- it's more 2002-ish,
15 early 2002-ish. Maybe late 2001 we had one or
16 two.

17 Q. From late 2001 or 2002, how far forward
18 did those unpaid debts extend to?

19 A. They are extending to today.

20 Q. During what years were they incurred
21 besides 2001 or 2002?

22 A. Each year there was a little bit of
23 debt added. I can't give you the exact number,
24 but each year there is a little bit of debt added
25 to that total of 800.

1 Szele
2 pay to keep up the technology for the computers,
3 the network synergy who helps provide our
4 internet and keeping everything in tact, the
5 databases and servers. All of that is very
6 expensive. We had to ask them to reduce cost and
7 find ways -- we had to go and tell every vendor
8 to give us breaks and wait, so on and so forth,
9 so that we could come up with these different
10 expenditures and pay them and come up with ways
11 of keeping the doors open on IAM so we can pay
12 these other expenses for information technology
13 as well. Again, it's very conservative.

14 Q. Have you provided us all the facts that
15 IAM is aware of that would support that alleged
16 damages amount of \$20,000?

17 A. I believe it's been provided. I
18 believe the information has been provided. I've
19 provided much of the information that I know to
20 counsel.

21 MR. SEAR: Let me note, I'm unaware of
22 any documentation that would support that.
23 If counsel believes there is any that
24 they've produced to us, I would appreciate
25 the Bates numbers.

1 Szele

2 Q. As you sit here now, can you give us
3 any specificity as to the amounts that you add up
4 to get to the \$690,595?

5 A. Specificity, I can't. It would be an
6 accounting thing. I can get you the accounting
7 specifically of debt exactly for each year from
8 the accountant.

9 Actually, didn't we provide -- okay. I
10 thought we provided something there.

11 Q. What do you think --

12 A. Isn't there a debt -- a list from the
13 accountant -- there was one page from the
14 accountant that I believe I gave to them that
15 shows the actual debt for IAM. I believe there
16 is one sheet or two sheets that came directly
17 from my accountant that shows the debt of about
18 \$860,000.

19 Q. This is IAM's debts?

20 A. IAM.

21 Q. These are not personal debts. These
22 are IAM debts?

23 A. IAM.

24 MR. SEAR: Okay. I would appreciate
25 the Bates number on that.

1 Szele
2 MR. LANZA: We'll get that to you.
3 Q. What basis, if any, is there for the
4 allegation that Mr. Zanger is responsible to
5 cover IAM's unpaid debts?
6 A. Could you repeat that, please.
7 (Record read)
8 A. Well, I think it's clear in my opinion
9 that he has an enormous responsibility to repay
10 these and also any future lost revenue.
11 First of all, we had a five-year
12 agreement with Mr. Zanger to place five million
13 at least and up to 50. Okay. That would've
14 provided enough revenue to build a very
15 successful hedge fund as I believe others -- I
16 believe Mr. Zask has also testified to that, that
17 if you have working capital and you have a good
18 trading strategy, it doesn't matter what the past
19 says, you can start fresh with a whole new
20 strategy in potential of being very successful in
21 this industry. I made it very clear to Mr.
22 Zanger that this is not going to be a one year,
23 two-year proposition. This has to take time.
24 His performance has to be put together, people
25 have to get to know him and trust him and make

334

1 Szele
2 sure his volatility is going to be handleable.
3 And when his actions and his failure to comply
4 with almost all of our agreements causes us to
5 lose our fund practically or lose our ability to
6 really do too much else at this point is -- takes
7 away our opportunity to pay back these debts.
8 He's breached this thing across the board.
9 The absolute minimum is the
10 reputational damage of my earnings potential, as
11 well as his five million up to 50 million, as
12 well as his management fee and performance fee
13 revenues which would've sustained us for a couple
14 more years to come even past the five-year
15 agreement, not to mention the other investors
16 that we lost because he pulled out.
17 The damages are across the board for
18 him on us that we can't continue and has affected
19 us in every way possible. That agreement is only
20 with Dan. We only had a five-year agreement with
21 Dan Zanger. I think he bears practically all the
22 responsibility of this.
23 Q. Let me direct your attention to the
24 5,000 in damages for moving costs. Do you see
25 that on page 4?

1 Szele
2 A. Yes.
3 Q. It says here, "Because IFL was shut
4 down." When was IFL shut down?
5 A. IFL was -- what's the exact date? I
6 mean, IFL has been in the process of shutting
7 down or going dormant since the fall, you know,
8 of 2007. Basically when we knew these things in
9 September/October of '07, we started shutting --
10 we started basically shutting things down in the
11 sense of going dormant. It's kind of been
12 happening since the fall of '07, and we are still
13 in the process now dealing with issues around the
14 shutting down or going dormant of the Fund. We
15 are still having to deal with countless issues
16 around the legal aspects of the final investor,
17 the audit which is just completed, so I'm still
18 having to do deal with that right now, but it was
19 basically shut down last -- when we had the final
20 redemption.
21 Q. That was sometime in the fall of 2007?
22 A. Yes. I mean, it's been sort of an
23 ongoing process, but you can argue that IFL was
24 shut down when Mr. Zanger caused all those
25 damages in '06. It was effectively shut down

336

1 Szele
2 temporarily even then, so I can't give you an
3 exact date, but we did incur a lot of cost with
4 moving out of our office and losing our office,
5 which was a very respectable small office in
6 Stamford, you know, that we were forced to leave
7 because we didn't have working capital or no
8 revenue.
9 Q. And when did you move your offices?
10 A. We moved out February of -- February of
11 '07.
12 Q. So after you moved out, IFL got another
13 investor, right?
14 A. No. That actually was effectively
15 coming in -- you can't, you know, it's not one
16 day to the next. It took a long time to get
17 people comfortable to some extent, you know, for
18 the 1.5 million in the first place. It's not
19 that it was after -- I mean, the actual
20 investment was in the process of coming in from
21 the end of '07 -- around the end of '07 -- I'm
22 sorry, end of '06. It's a process that takes
23 place. It's not one day to the next. It was
24 like a four-month process. If that investor
25 wanted to come into that Class T shares based on

1 Szele
2 Class T shares investing into that manager. I
3 can't give you an exact date on when that
4 investment was taking place, but it's that
5 four-month span.
6 MR. SEAR: Why don't we take a short
7 break.
8 (Recess)
9 MR. SEAR: I have no further questions
10 of this witness at this time. We do reserve
11 our rights with respect to precluding trial
12 testimony and various claims that have been
13 made with respect to damages and otherwise
14 given the record that we have with respect
15 to the witness's inability to answer certain
16 questions and provide certain facts or to
17 testify here today to the matters that he
18 represented in his last session he would be
19 prepared to testify about.
20 MR. LANZA: I have no questions.
21 THE WITNESS: I can expand on the
22 \$100,000 if you would like on the trading.
23 MR. SEAR: That's up to your counsel.
24 If counsel thinks your testimony needs to be
25 change, he'll ask you questions about it.

338

1 Szele
2 THE WITNESS: It doesn't need to be
3 changed. I can add to it.
4 MR. SEAR: My questioning is finished.
5 We have our record here. If your counsel
6 wants to ask you questions because there is
7 something in your testimony that's not
8 accurate, go ahead.
9 MR. LANZA: Okay. Would you please
10 expand on your statement with regard to the
11 \$100,000 worth of damage that was listed on
12 your interrogatories?
13 THE WITNESS: Sure. Our agreement was
14 signed in October, as you know, with
15 Mr. Zanger. That gave him plenty of time to
16 put the money in, the five million by
17 December 1st if he wanted to or by the end
18 of December or certainly by the beginning of
19 January. Conservatively, if he put his
20 money in by January 1, he says he was up 38
21 percent in Westwood during those first two
22 months that he was not in IFL, which
23 translates in management fees and
24 performance fees to about 100,750. If you
25 take the management fee and the performance

1 Szele
2 fee calculation, five million would've
3 turned into 6.9 million. Based on that
4 figure, we would've received an additional
5 100,000 in fees.
6 BY MR. SEAR:
7 Q. Mr. Szele, am I correct that you've
8 been looking at and pointing at a document in
9 connection with giving us this testimony just
10 now?
11 A. I am looking at a document.
12 Q. What is that document?
13 A. It's a document that shows a
14 calculation.
15 Q. Who prepared that document?
16 A. I believe it was prepared by one of our
17 counsel.
18 Q. Did your counsel just give you that
19 document while we were on break?
20 A. Yes.
21 MR. SEAR: I would call for its
22 production.
23 MR. LANZA: We'll produce it. We'll
24 give it to you now provided we have an
25 agreement that we are not waiving privilege

340

1 Szele
2 by handing this over.
3 MR. SEAR: Well, I believe --
4 A. I mean, this is what I gave them. In
5 prior times I've given them this calculation.
6 It's pretty -- it's not rocket science. If
7 January 1st he puts in five million, that's what
8 we would have been paid. That is a damage to me.
9 MR. SEAR: Could you mark this as
10 Zanger Exhibit 43. This is the document
11 that counsel just gave to us that the
12 witness has identified as having been
13 prepared by counsel and provided to him
14 during the break.
15 (Notes marked Zanger Exhibit 43 for
16 identification.)
17 Q. Mr. Szele, do you want to change any of
18 the testimony that you gave us before the break
19 concerning the basis for the \$100,000 damages
20 claim?
21 A. Do I want to change? I don't want to
22 change anything else. This is an additional
23 damage that I was referring to on my trading as
24 well that I simply forgot to mention. I can come
25 up with lots of other damages as well even beyond

1 Szele
2 what is marked here.
3 Q. So the testimony you gave concerning
4 the calculation of the 100,000 in lost trading
5 revenue before the break, that still stands?
6 A. Absolutely as a minimum.
7 MR. SEAR: Consistent with my prior
8 position and reservation of all our rights,
9 I have no further questions of this witness
10 at this time.
11 MR. LANZA: I have no additional
12 questions.
13 (Time noted: 1:00 p.m.)
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1 Szele
2 April 17, 2008
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4 ERRATA
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6 PAGE/LINE CHANGE/REASON
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1 Szele
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8 GEORGE SZELE
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10 Subscribed and sworn to
11 before me this day
12 of 2008
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1
2 CERTIFICATE
3
4 STATE OF NEW YORK)
5) ss.
6 COUNTY OF NEW YORK)
7
8 I, Jessica L. Loschky, a Shorthand
9 Reporter and Notary Public within and for the
10 State of New York, do hereby certify:
11 That GEORGE SZELE, the witness whose
12 deposition is hereinbefore set forth, was duly
13 sworn by me and that such deposition is a true
14 record of the testimony given by such witness.
15 I further certify that I am not related
16 to any of the parties to this action by blood or
17 marriage and that I am in no way interested in
18 the outcome of this matter.
19
20
21
22 JESSICA L. LOSCHKY
23
24
25

1
2 April 17, 2008

3
4 INDEX

5 WITNESS EXAMINATION BY PAGE

6 George Szele Mr. Sear 253

7

8 EXHIBIT PAGE

9 41 275 IAM 006362 through IAM 006502

10 42 259 E-mails dated 4/9/08

11 42 340 Notes

12

13 REQUEST: 314, 330, 332, 339

14

15

16

17

18

19

20

21

22

23

24

25

\$	10:31 [3] - 321:16, 321:17, 321:20 10:45:49 [1] - 322:4 10th [3] - 252:22, 260:13, 285:11 11 [1] - 252:23 11:03:03 [1] - 296:20 11:25:14 [1] - 286:16 11th [2] - 252:11, 270:10 125 [6] - 263:17, 265:9, 265:12, 265:13, 265:22, 266:18 12:00:56 [2] - 302:3, 302:6 12:10 [1] - 303:16 12:10:22 [1] - 303:15 13 [1] - 323:25 14 [1] - 261:17 14th [1] - 301:4 15 [2] - 273:14, 321:21 16th [3] - 269:17, 288:19, 288:20 17 [3] - 249:10, 342:2, 345:2 18th [2] - 315:19, 315:22 1:00 [2] - 267:13, 341:13 1:07-cv-06431-j5r [1] - 249:6 1st [2] - 338:17, 340:7	202 [1] - 263:8 21 [5] - 254:15, 255:12, 256:23, 275:7, 316:22 21st [3] - 254:7, 255:6, 255:25 22 [2] - 261:17, 303:17 222 [2] - 249:15, 250:14 225 [1] - 250:6 23 [1] - 283:21 25 [1] - 298:23 250 [1] - 287:17 253 [1] - 345:6 259 [1] - 345:10 25th [2] - 295:25, 296:6 26th [1] - 322:12 2700 [1] - 250:6 275 [1] - 345:9 28 [1] - 267:12 2:02:56 [1] - 322:24 2:42:14 [1] - 316:15	303:23
	3	5	
'02 [1] - 302:18 '04 [1] - 312:19 '05 [2] - 268:4, 297:23 '06 [11] - 268:4, 269:18, 270:7, 270:10, 272:5, 288:21, 307:24, 315:22, 335:25, 336:22 '07 [12] - 307:6, 307:9, 307:19, 307:24, 308:19, 310:17, 311:9, 335:9, 335:12, 336:11, 336:21 '90s [1] - 261:12	3 [3] - 290:6, 306:4, 324:9 30 [6] - 281:14, 283:18, 284:23, 293:3, 293:16, 302:25 30(b)(6) [1] - 253:12 300 [1] - 326:22 30th [1] - 282:19 314 [1] - 345:13 32 [2] - 283:16, 283:18 330 [1] - 345:13 332 [1] - 345:13 339 [1] - 345:13 340 [1] - 345:11 35 [1] - 282:11 37 [3] - 282:10, 283:3, 283:9 38 [1] - 338:20 39 [2] - 304:25, 305:3 3:06:49 [1] - 316:25 3:45:11 [1] - 298:16 3rd [1] - 291:3	5 [2] - 253:5, 263:12 5,000 [1] - 334:24 50 [11] - 284:23, 285:23, 324:18, 325:2, 325:4, 325:11, 325:14, 326:4, 333:13, 334:11 500,00 [1] - 324:19 5th [4] - 254:13, 255:2, 258:5, 265:6	
0	2	6	
006362 [3] - 252:5, 254:5, 345:9 006502 [3] - 252:5, 254:5, 345:9	2 [3] - 301:24, 306:2, 324:5 20 [2] - 285:2, 302:25 200 [2] - 287:11, 325:4 2001 [5] - 331:10, 331:13, 331:15, 331:17, 331:21 2002 [4] - 313:11, 331:10, 331:17, 331:21 2002-ish [2] - 331:14, 331:15 2004 [1] - 313:20 2005 [22] - 261:18, 261:20, 261:22, 264:5, 281:15, 282:14, 285:11, 290:20, 291:9, 292:4, 295:25, 296:7, 298:13, 300:4, 300:7, 300:13, 301:4, 301:25, 303:6, 303:23, 304:7, 304:21 2006 [16] - 264:5, 269:12, 276:8, 277:13, 277:19, 277:23, 279:14, 283:21, 286:13, 288:19, 290:6, 291:3, 300:6, 304:22, 315:19, 316:22, 318:19, 322:13 2007 [4] - 263:11, 311:10, 335:8, 335:21 2008 [7] - 249:10, 254:13, 260:5, 265:6, 342:2, 343:12, 345:2	3 [3] - 290:6, 306:4, 324:9 30 [6] - 281:14, 283:18, 284:23, 293:3, 293:16, 302:25 30(b)(6) [1] - 253:12 300 [1] - 326:22 30th [1] - 282:19 314 [1] - 345:13 32 [2] - 283:16, 283:18 330 [1] - 345:13 332 [1] - 345:13 339 [1] - 345:13 340 [1] - 345:11 35 [1] - 282:11 37 [3] - 282:10, 283:3, 283:9 38 [1] - 338:20 39 [2] - 304:25, 305:3 3:06:49 [1] - 316:25 3:45:11 [1] - 298:16 3rd [1] - 291:3	6 [1] - 263:8 6.9 [1] - 339:3 600 [1] - 302:18 6362 [1] - 275:9 6368 [1] - 275:15 6369 [1] - 275:17 6372 [1] - 279:10 6373 [1] - 279:11 6379 [1] - 281:14 6380 [1] - 283:20 6389 [1] - 285:10 6392 [2] - 286:10, 286:12 6408 [1] - 288:18 6409 [1] - 290:4 6412 [2] - 295:23, 296:3 6416 [3] - 297:17, 298:8, 298:10 6422 [2] - 300:17, 301:2 6435 [1] - 301:23 6438 [2] - 304:25, 305:3 6439 [1] - 306:15 6440 [1] - 311:20 6443 [1] - 312:9 6470 [1] - 311:24 6481 [2] - 315:17, 315:21 6497 [1] - 316:20 6499 [2] - 321:2, 321:11 6500 [1] - 322:11 6th [3] - 270:7, 298:12, 300:13
1		7	
1 [6] - 283:24, 286:13, 297:25, 305:25, 324:16, 338:20 1,000 [1] - 310:2 1.1 [1] - 283:24 1.5 [4] - 308:6, 325:15, 325:16, 336:18 1/31/2005 [1] - 305:13 10 [2] - 309:23, 329:12 10/31 [1] - 306:21 100 [4] - 272:14, 287:12, 309:24, 310:3 100,000 [7] - 326:14, 327:5, 329:5, 329:11, 329:19, 339:5, 341:4 100,750 [1] - 338:24 10007 [1] - 250:7 10017 [2] - 249:16, 250:15 10:20 [1] - 252:9 10:22 [1] - 249:11	4	7 [1] - 263:12 7th [1] - 269:18	
	4	8	
	4 [3] - 288:24, 304:21, 334:25 4/9/08 [2] - 259:22, 345:10 40 [2] - 282:9, 285:16 41 [5] - 252:6, 254:3, 275:5, 285:4, 345:9 41st [2] - 249:16, 250:14 42 [6] - 259:21, 259:23, 295:12, 345:10, 345:11 43 [3] - 285:21, 340:10, 340:15 48 [2] - 261:17, 321:7 4th [3] - 263:11, 301:25,	8 [1] - 331:7 800 [3] - 286:25, 287:11, 331:25 8:30 [3] - 321:6, 321:8, 321:16	

<p>9</p> <p>90 [1] - 309:24 900 [3] - 309:24, 309:25, 310:2 900,000 [1] - 331:8 98 [2] - 292:22, 292:24 9:45:27 [1] - 301:6 9th [2] - 260:5, 279:14</p>	<p>323:22 advance [1] - 256:2 affected [1] - 334:18 affects [1] - 308:25 affiliation [1] - 299:24 afford [4] - 263:2, 263:3 afraid [2] - 302:10, 302:24 agree [1] - 302:22 Agreed [3] - 251:4, 251:8, 251:12 agreed [2] - 277:6, 320:15 Agreement [1] - 273:19 agreement [26] - 253:9, 257:3, 257:25, 274:3, 274:20, 298:20, 298:21, 299:11, 301:13, 304:9, 307:24, 317:3, 317:16, 317:19, 318:8, 318:24, 319:9, 319:19, 326:17, 333:12, 334:15, 334:19, 334:20, 338:13, 339:25 agreements [1] - 334:4 ahead [1] - 338:8 alert [1] - 296:23 allegation [3] - 325:8, 326:2, 333:4 alleged [2] - 328:14, 330:15 allocated [1] - 309:24 allotted [1] - 324:16 allow [1] - 279:6 allowed [3] - 274:17, 277:7, 284:10 almost [1] - 334:4 amended [1] - 273:15 amount [6] - 296:16, 323:7, 326:10, 328:8, 329:22, 330:16 amounts [3] - 269:17, 310:12, 332:3 annual [1] - 324:18 Answer [6] - 261:24, 262:2, 263:23, 264:2, 264:4, 264:6 answer [11] - 255:13, 256:3, 256:5, 258:7, 260:7, 260:11, 265:2, 277:3, 280:9, 309:15, 337:15 Anthony [1] - 296:23 anticipating [1] - 327:2 anxious [1] - 320:16 anyplace [1] - 291:22 anyway [1] - 320:21 apart [1] - 275:18 Appearances [1] - 250:2 applicable [2] - 274:2, 274:22 appreciate [3] - 315:13, 330:24, 332:24 approach [1] - 304:16 approve [7] - 278:19, 278:21, 278:22, 278:23,</p>	<p>278:24, 279:3, 279:4 approved [5] - 269:5, 279:3, 314:16, 315:4 approx [1] - 285:16 April [8] - 249:10, 252:11, 252:22, 260:5, 260:13, 283:24, 342:2, 345:2 areas [1] - 273:6 argue [1] - 335:23 arrangement [2] - 319:13, 319:14 articulated [1] - 294:21 Arturo [1] - 263:20 aside [2] - 271:10, 271:16 aspect [1] - 291:8 aspects [2] - 313:18, 335:16 asset [2] - 305:11, 305:20 Asset [4] - 249:4, 263:15, 265:19, 311:22 assets [13] - 282:7, 282:19, 283:9, 285:16, 288:8, 288:10, 288:12, 299:4, 299:23, 309:12, 324:17, 326:17 assume [9] - 264:9, 270:19, 270:22, 272:12, 286:8, 297:4, 297:7, 300:15, 317:10 assuming [2] - 252:24, 257:13 attend [1] - 252:13 attention [25] - 261:17, 263:7, 271:18, 273:16, 281:13, 283:19, 285:9, 286:9, 286:15, 288:17, 290:4, 295:23, 296:19, 297:17, 298:8, 298:15, 301:2, 304:24, 315:17, 316:20, 321:2, 322:10, 322:23, 324:4, 334:23 Attorneys [2] - 250:5, 250:13 audit [5] - 308:22, 311:10, 311:11, 335:17 audited [1] - 314:13 August [3] - 281:14, 282:14, 282:19 authorized [1] - 251:10 available [1] - 278:17 aware [16] - 254:18, 261:13, 268:7, 268:8, 268:9, 269:11, 272:4, 273:24, 274:20, 292:2, 292:9, 293:6, 301:10, 311:4, 315:10, 330:15</p>	<p>Bank [1] - 275:10 Based [1] - 339:3 based [14] - 306:8, 324:24, 325:6, 325:7, 325:8, 325:11, 325:16, 325:25, 326:4, 327:16, 327:23, 327:24, 328:10, 336:25 basis [2] - 333:3, 340:19 Bate [1] - 265:3 Bates [19] - 254:4, 257:21, 257:23, 270:4, 275:9, 275:15, 279:10, 281:13, 283:20, 285:9, 286:9, 288:17, 301:23, 304:25, 314:21, 315:13, 321:10, 330:25, 332:25 bearing [1] - 254:4 bears [1] - 334:21 beginning [4] - 293:14, 293:20, 326:19, 338:18 begins [1] - 324:6 belief [9] - 282:20, 291:2, 303:5, 303:10, 303:11, 303:12, 303:13, 304:7, 304:15 believes [1] - 330:23 Below [1] - 311:21 below [2] - 278:15, 284:3 Bermuda [2] - 279:8, 296:24 best [10] - 260:10, 262:23, 262:24, 269:21, 278:11, 292:25, 317:14, 318:11, 319:7, 323:9 beta [1] - 297:12 better [1] - 260:11 between [19] - 251:5, 259:25, 280:14, 280:19, 283:21, 285:11, 286:13, 288:18, 290:5, 295:24, 296:6, 298:12, 301:3, 301:13, 305:23, 315:18, 316:21, 321:3, 322:12 beyond [3] - 274:3, 310:12, 340:25 Beyond [3] - 274:19, 276:22, 319:18 Bfs [3] - 289:4, 289:18, 289:21 big [1] - 310:6 biggest [1] - 268:15 bill [1] - 252:15 bills [5] - 262:16, 318:18, 318:22, 320:11, 320:14 bit [13] - 258:13, 258:14, 258:16, 258:17, 261:2, 261:3, 276:14, 283:12, 283:14, 319:21, 326:13, 331:22, 331:24 blood [1] - 344:16</p>
<p>A</p> <p>ability [1] - 334:5 able [1] - 260:10 absolute [1] - 334:9 Absolutely [1] - 341:6 absorb [2] - 310:8, 311:2 access [1] - 288:13 according [2] - 323:22, 325:3 account [11] - 269:8, 274:3, 274:8, 274:14, 274:20, 278:9, 306:10, 322:17, 326:14, 326:22, 327:7 accountant [8] - 261:7, 261:14, 314:16, 315:5, 332:8, 332:13, 332:14, 332:17 accounting [5] - 253:14, 261:6, 310:21, 332:6 accounts [1] - 282:8 accrual [1] - 310:20 accrued [1] - 310:23 accurate [2] - 300:10, 338:8 accusations [1] - 318:6 action [3] - 273:15, 277:13, 344:16 actions [1] - 334:3 activity [1] - 323:24 actual [3] - 289:9, 332:15, 336:19 Actual [1] - 291:4 add [3] - 256:10, 332:3, 338:3 added [2] - 331:23, 331:24 addition [1] - 253:13 additional [10] - 253:10, 254:24, 257:15, 260:8, 280:24, 317:19, 320:17, 339:4, 340:22, 341:11 address [3] - 253:8, 253:17, 295:18 addressed [1] - 288:16 administer [1] - 251:10 adminISTRATION [2] - 308:25, 309:16 administrative [1] - 310:20 administrator [8] - 275:14, 289:24, 305:6, 306:13, 322:19, 323:12, 323:20,</p>	<p>B</p> <p>baby [1] - 262:13 babysitters [1] - 263:3 Balestriere [1] - 250:4</p>		

<p>board [3] - 329:25, 334:8, 334:17</p> <p>borrow [1] - 262:17</p> <p>bottom [1] - 298:17</p> <p>bound [1] - 299:14</p> <p>breached [2] - 301:13, 334:8</p> <p>break [7] - 294:4, 294:5, 337:7, 339:19, 340:14, 340:18, 341:5</p> <p>breakdown [3] - 266:20, 267:23, 268:13</p> <p>breaking [1] - 297:11</p> <p>breaks [1] - 330:8</p> <p>brief [1] - 320:5</p> <p>briefly [1] - 254:22</p> <p>bring [1] - 253:9</p> <p>Broadway [1] - 250:6</p> <p>broken [1] - 324:8</p> <p>broker [2] - 263:14, 265:18</p> <p>Brokers [2] - 326:15, 327:6</p> <p>bronchitis [1] - 259:3</p> <p>brought [1] - 331:10</p> <p>brush [1] - 278:16</p> <p>build [1] - 333:14</p> <p>busy [1] - 316:25</p> <p>Butterfield [3] - 275:10, 289:22, 289:23</p> <p>button [1] - 279:19</p>	<p>323:12, 335:24</p> <p>causes [1] - 334:4</p> <p>causing [1] - 311:3</p> <p>certain [7] - 272:14, 290:14, 294:14, 328:8, 337:15, 337:16</p> <p>certainly [2] - 319:22, 338:18</p> <p>Certificate [1] - 344:2</p> <p>certify [2] - 344:10, 344:15</p> <p>chance [2] - 254:17, 254:21</p> <p>change [5] - 304:20, 337:25, 340:17, 340:21, 340:22</p> <p>Change/reason [1] - 342:6</p> <p>changed [1] - 338:3</p> <p>channels [1] - 278:10</p> <p>characterize [1] - 294:19</p> <p>charged [2] - 310:11, 310:16</p> <p>Chart [3] - 282:2, 282:9, 282:10</p> <p>chat [1] - 294:5</p> <p>check [5] - 278:5, 307:25, 308:14, 315:6, 315:7</p> <p>chief [1] - 323:16</p> <p>child [1] - 254:20</p> <p>children's [1] - 254:19</p> <p>chose [1] - 286:18</p> <p>circumstances [2] - 276:12, 276:14</p> <p>claim [1] - 340:20</p> <p>claims [1] - 337:12</p> <p>class [2] - 305:21, 307:6</p> <p>Class [13] - 284:8, 284:11, 284:12, 284:16, 284:18, 284:19, 296:24, 306:17, 306:25, 311:13, 311:17, 336:25, 337:2</p> <p>classes [1] - 305:7</p> <p>clean [1] - 285:7</p> <p>cleaner [2] - 257:2, 257:24</p> <p>clear [11] - 268:16, 272:22, 281:17, 282:17, 284:17, 289:21, 297:18, 297:21, 326:18, 333:8, 333:21</p> <p>Clearing [1] - 273:17</p> <p>clerical [1] - 257:8</p> <p>client [5] - 253:9, 253:15, 255:19, 275:12, 275:14</p> <p>colleague [1] - 260:2</p> <p>collecting [1] - 279:23</p> <p>collection [2] - 254:4, 275:6</p> <p>columns [1] - 271:3</p> <p>comfortable [2] - 302:13, 336:17</p> <p>coming [3] - 283:24, 336:15, 336:20</p> <p>comment [3] - 290:8, 290:19, 293:21</p>	<p>comments [1] - 289:8</p> <p>commitment [1] - 298:3</p> <p>committed [1] - 295:14</p> <p>communications [1] - 257:6</p> <p>comparison [1] - 293:8</p> <p>compensation [1] - 299:5</p> <p>complained [2] - 318:3</p> <p>complaint [1] - 273:15</p> <p>complete [1] - 268:13</p> <p>completed [5] - 311:10, 315:5, 315:7, 315:8, 335:17</p> <p>comply [1] - 334:3</p> <p>computer [3] - 279:20, 281:18, 300:20</p> <p>computers [1] - 330:2</p> <p>concern [1] - 323:16</p> <p>concerned [1] - 278:15</p> <p>concerning [7] - 252:22, 264:11, 280:19, 290:19, 328:13, 340:19, 341:3</p> <p>conferring [1] - 256:4</p> <p>Connecticut [1] - 284:24</p> <p>connection [2] - 280:5, 339:9</p> <p>conservative [5] - 282:11, 328:2, 328:17, 329:22, 330:13</p> <p>Conservatively [1] - 338:19</p> <p>conservatively [1] - 308:16</p> <p>considered [4] - 303:24, 304:14, 304:20, 308:16</p> <p>Consistent [1] - 341:7</p> <p>constituted [1] - 261:23</p> <p>constraint [1] - 259:14</p> <p>contains [1] - 260:4</p> <p>contently [1] - 263:21</p> <p>continue [5] - 317:23, 320:14, 320:24, 334:18</p> <p>continues [1] - 311:24</p> <p>contract [8] - 270:25, 273:2, 277:5, 277:7, 277:8, 277:25, 278:24, 324:22</p> <p>contrary [1] - 252:24</p> <p>conversation [5] - 281:19, 281:21, 293:12, 293:25, 318:25</p> <p>conversations [7] - 277:21, 278:4, 278:6, 278:13, 280:14, 319:22, 320:5</p> <p>copies [4] - 256:13, 257:2, 257:3, 281:3</p> <p>copy [8] - 257:24, 261:15, 273:14, 285:6, 285:8, 311:11, 311:12</p> <p>correct [7] - 268:18, 270:21, 285:13, 288:11, 288:23, 295:17, 339:7</p> <p>corrected [1] - 265:15</p> <p>correctly [2] - 280:9,</p>	<p>311:19</p> <p>cost [5] - 297:11, 329:20, 329:23, 330:6, 336:3</p> <p>costs [1] - 334:24</p> <p>could've [5] - 279:9, 326:11, 326:23, 327:11, 329:16</p> <p>counsel [25] - 251:5, 252:15, 252:21, 252:25, 254:7, 254:25, 255:16, 263:11, 280:11, 280:17, 281:4, 294:8, 294:16, 295:5, 295:13, 295:20, 330:20, 330:23, 337:23, 337:24, 338:5, 339:17, 339:18, 340:11, 340:13</p> <p>count [1] - 264:7</p> <p>countless [1] - 335:15</p> <p>County [1] - 344:6</p> <p>couple [7] - 252:7, 262:22, 289:8, 313:14, 313:15, 331:11, 334:13</p> <p>Court [4] - 249:2, 263:17, 265:22, 265:23</p> <p>court [5] - 252:14, 263:10, 264:13, 265:8, 265:16</p> <p>cover [2] - 323:10, 333:5</p> <p>covered [2] - 266:19, 268:8</p> <p>Craig [1] - 250:8</p> <p>creat [1] - 306:4</p> <p>create [1] - 326:12</p> <p>created [2] - 306:19, 306:21</p> <p>cross [1] - 299:14</p> <p>current [1] - 319:14</p> <p>currents [1] - 299:15</p> <p>Customer [1] - 273:18</p> <p>cut [1] - 327:25</p>
<p>C</p> <p>calculate [1] - 329:21</p> <p>calculated [5] - 309:11, 324:14, 326:9, 327:18, 327:20</p> <p>calculation [15] - 324:23, 325:5, 325:8, 325:23, 325:25, 326:7, 327:23, 328:5, 328:13, 328:21, 329:5, 339:2, 339:14, 340:5, 341:4</p> <p>calculator [2] - 329:6, 329:7</p> <p>calmed [1] - 261:3</p> <p>cancel [1] - 259:2</p> <p>cancellation [1] - 252:19</p> <p>capable [1] - 263:5</p> <p>capital [19] - 276:17, 276:23, 277:3, 277:5, 317:9, 317:19, 317:25, 318:21, 318:23, 319:11, 320:8, 320:9, 320:11, 320:13, 320:17, 320:20, 333:17, 336:7</p> <p>capitalizes [1] - 323:15</p> <p>care [2] - 252:16, 274:13</p> <p>case [5] - 258:7, 263:10, 279:24, 280:7, 280:20</p> <p>caused [3] - 280:23,</p>	<p>323:12, 335:24</p> <p>causes [1] - 334:4</p> <p>causing [1] - 311:3</p> <p>certain [7] - 272:14, 290:14, 294:14, 328:8, 337:15, 337:16</p> <p>certainly [2] - 319:22, 338:18</p> <p>Certificate [1] - 344:2</p> <p>certify [2] - 344:10, 344:15</p> <p>chance [2] - 254:17, 254:21</p> <p>change [5] - 304:20, 337:25, 340:17, 340:21, 340:22</p> <p>Change/reason [1] - 342:6</p> <p>changed [1] - 338:3</p> <p>channels [1] - 278:10</p> <p>characterize [1] - 294:19</p> <p>charged [2] - 310:11, 310:16</p> <p>Chart [3] - 282:2, 282:9, 282:10</p> <p>chat [1] - 294:5</p> <p>check [5] - 278:5, 307:25, 308:14, 315:6, 315:7</p> <p>chief [1] - 323:16</p> <p>child [1] - 254:20</p> <p>children's [1] - 254:19</p> <p>chose [1] - 286:18</p> <p>circumstances [2] - 276:12, 276:14</p> <p>claim [1] - 340:20</p> <p>claims [1] - 337:12</p> <p>class [2] - 305:21, 307:6</p> <p>Class [13] - 284:8, 284:11, 284:12, 284:16, 284:18, 284:19, 296:24, 306:17, 306:25, 311:13, 311:17, 336:25, 337:2</p> <p>classes [1] - 305:7</p> <p>clean [1] - 285:7</p> <p>cleaner [2] - 257:2, 257:24</p> <p>clear [11] - 268:16, 272:22, 281:17, 282:17, 284:17, 289:21, 297:18, 297:21, 326:18, 333:8, 333:21</p> <p>Clearing [1] - 273:17</p> <p>clerical [1] - 257:8</p> <p>client [5] - 253:9, 253:15, 255:19, 275:12, 275:14</p> <p>colleague [1] - 260:2</p> <p>collecting [1] - 279:23</p> <p>collection [2] - 254:4, 275:6</p> <p>columns [1] - 271:3</p> <p>comfortable [2] - 302:13, 336:17</p> <p>coming [3] - 283:24, 336:15, 336:20</p> <p>comment [3] - 290:8, 290:19, 293:21</p>	<p>comments [1] - 289:8</p> <p>commitment [1] - 298:3</p> <p>committed [1] - 295:14</p> <p>communications [1] - 257:6</p> <p>comparison [1] - 293:8</p> <p>compensation [1] - 299:5</p> <p>complained [2] - 318:3</p> <p>complaint [1] - 273:15</p> <p>complete [1] - 268:13</p> <p>completed [5] - 311:10, 315:5, 315:7, 315:8, 335:17</p> <p>comply [1] - 334:3</p> <p>computer [3] - 279:20, 281:18, 300:20</p> <p>computers [1] - 330:2</p> <p>concern [1] - 323:16</p> <p>concerned [1] - 278:15</p> <p>concerning [7] - 252:22, 264:11, 280:19, 290:19, 328:13, 340:19, 341:3</p> <p>conferring [1] - 256:4</p> <p>Connecticut [1] - 284:24</p> <p>connection [2] - 280:5, 339:9</p> <p>conservative [5] - 282:11, 328:2, 328:17, 329:22, 330:13</p> <p>Conservatively [1] - 338:19</p> <p>conservatively [1] - 308:16</p> <p>considered [4] - 303:24, 304:14, 304:20, 308:16</p> <p>Consistent [1] - 341:7</p> <p>constituted [1] - 261:23</p> <p>constraint [1] - 259:14</p> <p>contains [1] - 260:4</p> <p>contently [1] - 263:21</p> <p>continue [5] - 317:23, 320:14, 320:24, 334:18</p> <p>continues [1] - 311:24</p> <p>contract [8] - 270:25, 273:2, 277:5, 277:7, 277:8, 277:25, 278:24, 324:22</p> <p>contrary [1] - 252:24</p> <p>conversation [5] - 281:19, 281:21, 293:12, 293:25, 318:25</p> <p>conversations [7] - 277:21, 278:4, 278:6, 278:13, 280:14, 319:22, 320:5</p> <p>copies [4] - 256:13, 257:2, 257:3, 281:3</p> <p>copy [8] - 257:24, 261:15, 273:14, 285:6, 285:8, 311:11, 311:12</p> <p>correct [7] - 268:18, 270:21, 285:13, 288:11, 288:23, 295:17, 339:7</p> <p>corrected [1] - 265:15</p> <p>correctly [2] - 280:9,</p>	<p>D</p> <p>damage [6] - 296:17, 311:3, 334:10, 338:11, 340:8, 340:23</p> <p>damages [11] - 260:8, 328:14, 329:12, 329:21, 330:16, 334:17, 334:24, 335:25, 337:13, 340:19, 340:25</p> <p>Dan [50] - 268:8, 269:7, 272:6, 278:20, 280:14, 281:23, 282:7, 283:21, 285:11, 285:14, 285:19, 286:13, 286:16, 287:8, 288:19, 288:22, 289:6, 290:3, 290:6, 291:8, 298:19, 298:25, 299:17, 301:4, 306:2, 313:22, 314:10, 314:16, 315:4, 315:18, 316:14, 316:16, 316:22, 316:25, 318:14, 318:23,</p>

<p>321:4, 321:13, 322:12, 324:16, 324:20, 324:24, 325:2, 325:9, 326:11, 327:5, 334:20, 334:21</p> <p>Dan's [4] - 261:23, 305:7, 305:22, 326:25</p> <p>Daniel [1] - 249:7</p> <p>databases [1] - 330:5</p> <p>date [21] - 253:18, 270:7, 270:10, 271:6, 271:12, 271:24, 272:2, 272:9, 272:18, 276:9, 300:15, 300:21, 300:22, 303:22, 307:25, 316:14, 335:5, 336:3, 337:3</p> <p>dated [15] - 259:22, 279:14, 285:11, 286:13, 288:19, 290:6, 295:25, 296:6, 298:12, 300:4, 301:4, 312:18, 315:19, 316:22, 345:10</p> <p>dates [3] - 269:17, 270:2</p> <p>days [1] - 262:22</p> <p>deal [4] - 262:14, 296:13, 335:15, 335:18</p> <p>dealing [2] - 296:18, 335:13</p> <p>deals [2] - 296:10, 296:16</p> <p>debt [6] - 331:23, 331:24, 332:7, 332:12, 332:15, 332:17</p> <p>debts [9] - 331:4, 331:5, 331:18, 332:19, 332:21, 332:22, 333:5, 334:7</p> <p>December [9] - 269:18, 272:4, 293:14, 293:21, 297:25, 301:4, 302:18, 338:17, 338:18</p> <p>Defendant [1] - 249:8</p> <p>defendant [1] - 250:13</p> <p>Defendant's [1] - 324:3</p> <p>defendants [1] - 249:15</p> <p>define [1] - 278:21</p> <p>definitely [5] - 264:14, 278:6, 278:13, 293:11, 304:9</p> <p>denominated [2] - 311:21, 324:2</p> <p>deposed [1] - 254:13</p> <p>deposition [32] - 251:9, 251:13, 253:14, 254:15, 254:25, 255:7, 256:2, 256:9, 256:12, 256:15, 256:19, 257:19, 258:5, 258:13, 258:14, 258:16, 258:18, 259:8, 260:16, 260:20, 261:16, 266:2, 266:13, 267:8, 273:10, 294:11, 295:21, 311:16, 328:22, 329:4, 344:12, 344:13</p> <p>Deposition [1] - 249:14</p> <p>desired [1] - 319:19</p>	<p>detail [3] - 254:22, 268:22, 311:12</p> <p>detailed [1] - 310:24</p> <p>details [1] - 267:24</p> <p>developed [1] - 312:14</p> <p>difference [1] - 305:23</p> <p>different [7] - 264:15, 275:12, 297:7, 305:17, 305:18, 306:6, 330:9</p> <p>difficulties [1] - 259:4</p> <p>difficulty [1] - 297:19</p> <p>direct [24] - 261:16, 263:7, 273:15, 281:13, 283:19, 285:9, 286:9, 286:15, 288:17, 290:4, 295:23, 296:19, 297:17, 298:8, 298:15, 301:2, 304:24, 315:17, 316:20, 321:2, 322:10, 322:23, 324:4, 334:23</p> <p>directing [1] - 271:18</p> <p>directly [8] - 275:12, 275:13, 278:7, 278:8, 306:9, 312:22, 323:10, 332:16</p> <p>director [3] - 277:9, 277:12, 279:5</p> <p>directors [1] - 278:19</p> <p>disagree [1] - 277:14</p> <p>discuss [4] - 277:25, 318:24, 319:6, 319:13</p> <p>discussed [1] - 294:8</p> <p>discussion [2] - 290:14, 312:5</p> <p>disregarded [1] - 278:10</p> <p>dissatisfaction [1] - 278:14</p> <p>distributed [1] - 309:7</p> <p>District [2] - 249:2, 249:2</p> <p>doc [1] - 289:10</p> <p>docs [2] - 322:19, 322:20</p> <p>document [33] - 257:23, 259:25, 260:3, 267:12, 269:25, 271:11, 271:13, 271:18, 271:20, 271:24, 273:22, 275:18, 276:4, 292:3, 292:12, 293:7, 293:24, 298:2, 311:23, 312:2, 312:4, 312:17, 312:22, 312:23, 313:4, 324:5, 339:8, 339:11, 339:12, 339:13, 339:15, 339:19, 340:10</p> <p>documentation [1] - 330:22</p> <p>documents [38] - 253:10, 254:4, 254:6, 254:8, 254:11, 254:14, 254:16, 254:25, 255:6, 255:11, 255:25, 256:7, 256:11, 256:14, 256:17, 256:18, 256:23, 256:25, 257:5, 257:18, 257:20, 257:21, 258:3,</p>	<p>259:10, 260:9, 261:5, 264:8, 273:24, 274:6, 274:7, 274:19, 274:24, 275:6, 294:14, 294:24, 311:4, 315:12, 323:12</p> <p>domestic [5] - 287:7, 293:18, 299:16, 299:22, 299:23</p> <p>domestically [3] - 288:15, 298:21, 299:18</p> <p>done [9] - 257:15, 263:17, 265:22, 280:5, 281:6, 291:8, 293:18, 322:20, 323:11</p> <p>Done [1] - 322:2</p> <p>doors [1] - 330:11</p> <p>dormant [3] - 335:7, 335:11, 335:14</p> <p>doubtful [1] - 300:9</p> <p>dough [1] - 316:16</p> <p>down [17] - 261:3, 267:2, 286:15, 288:16, 297:11, 297:21, 319:2, 324:7, 324:8, 335:4, 335:7, 335:10, 335:14, 335:19, 335:24, 335:25</p> <p>drawdown [1] - 285:2</p> <p>drawdowns [3] - 318:2, 319:8, 319:24</p> <p>drop [1] - 302:25</p> <p>due [10] - 269:17, 270:2, 270:10, 271:6, 271:12, 271:24, 272:2, 272:9, 272:18</p> <p>duly [2] - 252:3, 344:12</p> <p>During [1] - 331:20</p> <p>during [5] - 259:4, 294:5, 327:9, 338:21, 340:14</p>	<p>earned [1] - 327:11</p> <p>earnings [1] - 334:10</p> <p>easily [1] - 261:14</p> <p>East [2] - 249:15, 250:14</p> <p>ebay [1] - 297:10</p> <p>effect [1] - 306:22</p> <p>effectively [2] - 335:25, 336:14</p> <p>effort [3] - 253:16, 314:11, 320:15</p> <p>efforts [1] - 299:24</p> <p>eight [1] - 325:19</p> <p>either [1] - 278:16</p> <p>electronic [1] - 300:9</p> <p>electronically [2] - 281:7, 281:11</p> <p>eligible [3] - 299:10, 299:19, 299:25</p> <p>encyclopedia [1] - 315:12</p> <p>end [18] - 271:17, 285:14, 293:14, 293:20, 295:15, 295:21, 297:25, 304:21, 305:21, 311:9, 323:5, 323:21, 336:21, 336:22, 338:17</p> <p>enormous [1] - 333:9</p> <p>entries [3] - 306:16, 306:24, 307:3</p> <p>entry [13] - 270:7, 286:16, 288:22, 296:20, 298:16, 301:6, 302:3, 303:15, 305:12, 306:11, 316:24, 322:24, 324:6</p> <p>equates [1] - 325:15</p> <p>Errata [1] - 342:4</p> <p>error [1] - 257:9</p> <p>estimate [1] - 292:21</p> <p>evening [1] - 252:12</p> <p>exact [7] - 307:25, 327:23, 329:5, 331:23, 335:5, 336:3, 337:3</p> <p>exactly [15] - 257:12, 308:14, 308:22, 314:17, 315:6, 315:7, 318:10, 318:15, 327:19, 328:9, 328:16, 328:19, 329:4, 329:8, 332:7</p> <p>Examination [2] - 253:24, 345:5</p> <p>examination [4] - 252:10, 258:9, 267:14, 294:11</p> <p>example [1] - 313:22</p> <p>Excellent [1] - 287:14</p> <p>excellent [4] - 287:19, 287:23, 288:4, 301:8</p> <p>excellents [1] - 288:6</p> <p>except [1] - 251:6</p> <p>excess [1] - 329:12</p> <p>exchange [4] - 295:24, 296:5, 298:11, 321:3</p>
--	--	--	--

<p>exchanged [1] - 274:16 exchanges [8] - 263:14, 263:19, 263:22, 264:6, 264:21, 265:18, 266:3, 266:9 exclude [1] - 283:5 Execution [1] - 273:17 Exhibit [11] - 252:6, 254:3, 259:21, 259:23, 267:12, 273:14, 275:5, 323:25, 340:10, 340:15, 345:8 exhibit [2] - 285:3, 295:11 exist [3] - 265:10, 280:14, 280:18 expand [2] - 337:21, 338:10 expected [2] - 319:25, 323:13 expenditures [1] - 330:10 expense [1] - 309:16 expensed [1] - 309:18 expenses [5] - 309:23, 310:5, 310:7, 310:10, 330:12 expensive [2] - 308:24, 330:6 experienced [1] - 268:11 explain [1] - 328:4 explained [1] - 311:18 explanation [1] - 255:5 expressed [2] - 266:24, 278:13 expresses [1] - 266:22 extend [1] - 331:18 extending [1] - 331:19 extent [3] - 269:11, 278:12, 336:17 extremely [1] - 328:17</p>	<p>fee [17] - 299:11, 299:25, 306:5, 306:7, 306:8, 310:16, 310:19, 324:15, 324:19, 324:22, 324:23, 325:11, 325:15, 334:12, 338:25, 339:2 Fees [5] - 324:6, 324:9, 324:10, 324:13, 325:22 fees [25] - 298:24, 308:23, 308:24, 308:25, 309:7, 309:11, 309:13, 309:14, 309:16, 309:17, 310:4, 310:9, 310:11, 310:15, 310:20, 310:22, 324:8, 324:9, 325:15, 329:2, 338:23, 338:24, 339:5 felt [1] - 293:8 few [1] - 268:9 figure [2] - 284:6, 339:4 figured [2] - 321:19, 329:8 figuring [1] - 317:4 file [4] - 279:19, 281:5, 300:20, 300:23 filing [1] - 251:13 fill [2] - 322:18, 323:11 filled [1] - 274:7 final [3] - 312:20, 335:16, 335:19 Fine [1] - 265:15 fine [1] - 295:22 finished [1] - 338:4 first [12] - 267:15, 268:6, 270:5, 270:6, 275:8, 285:13, 290:8, 305:25, 316:9, 322:11, 336:18, 338:21 First [4] - 311:8, 324:2, 324:3, 333:11 five [19] - 278:15, 283:11, 293:20, 309:4, 309:5, 310:25, 313:10, 325:19, 327:14, 327:16, 327:17, 333:11, 333:12, 334:11, 334:14, 334:20, 338:16, 339:2, 340:7 five-year [3] - 333:11, 334:14, 334:20 follow [2] - 253:20, 258:10 follow-up [2] - 253:20, 258:10 followed [3] - 280:7, 287:3, 319:4 follows [1] - 252:4 forced [2] - 279:6, 336:6 forgot [2] - 319:5, 340:24 form [3] - 251:6, 275:20, 296:17 format [1] - 314:13 formatting [2] - 257:7, 257:10 forms [1] - 324:9</p>	<p>formula [1] - 328:3 forth [11] - 260:14, 271:17, 273:25, 303:19, 313:5, 324:13, 326:7, 327:13, 328:24, 330:8, 344:12 forward [5] - 317:22, 317:25, 319:7, 331:13, 331:17 four [8] - 262:25, 306:16, 306:24, 331:9, 336:24, 337:5 four-month [2] - 336:24, 337:5 four-year-old [1] - 262:25 frame [2] - 262:10, 262:19 Frankly [1] - 302:10 fresh [1] - 333:19 friendly [1] - 284:20 front [2] - 285:3, 329:6 frustrated [1] - 319:24 full [2] - 267:23, 271:14 function [2] - 279:18, 300:18 functionality [1] - 300:20 Fund [24] - 274:9, 274:14, 277:10, 277:12, 289:23, 289:25, 293:4, 296:11, 296:14, 301:8, 301:13, 305:6, 307:10, 308:12, 308:20, 308:22, 309:10, 309:12, 310:2, 310:10, 310:13, 310:15, 311:21, 335:14 fund [12] - 282:9, 287:7, 288:11, 288:14, 293:17, 293:18, 299:9, 299:17, 299:22, 299:23, 333:15, 334:5 funds [1] - 288:17 future [3] - 313:13, 313:16, 333:10 futures [2] - 326:14, 327:7 Futures [1] - 273:18</p>	<p>glitch [2] - 280:23, 300:25 global [1] - 312:10 Goldman [14] - 261:21, 263:20, 266:11, 266:16, 272:9, 272:12, 272:13, 272:15, 272:16, 273:17, 273:25, 274:15, 274:21, 278:8 Google [1] - 297:10 Gprm [1] - 313:10 great [15] - 290:24, 291:7, 291:9, 291:12, 291:14, 291:15, 291:19, 292:4, 292:6, 292:14, 293:4, 293:10, 297:22, 297:23, 316:15 greater [1] - 326:23 grow [1] - 287:15 Growing [1] - 288:8 growing [2] - 288:8, 288:10 guess [7] - 257:8, 282:22, 288:5, 290:17, 300:24, 319:25, 327:16 gunslinger [4] - 303:24, 304:14, 304:18, 304:20 guy [1] - 310:7 guys [3] - 261:8, 326:21, 329:25</p>
F			
<p>fact [6] - 253:11, 258:23, 282:12, 294:16, 304:19, 319:24 facts [3] - 276:11, 330:14, 337:16 failure [1] - 334:3 fair [4] - 273:8, 294:20, 299:13, 320:16 fall [3] - 335:7, 335:12, 335:21 false [3] - 265:7, 265:8, 265:9 family [4] - 258:21, 260:23, 262:15 far [7] - 254:12, 279:2, 280:12, 312:21, 326:23, 331:17 father [1] - 290:16 fault [1] - 252:17 February [6] - 288:19, 288:20, 307:6, 307:19, 336:10</p>			
G			
	<p>Gb [4] - 282:4, 282:6, 282:10 general [1] - 288:9 generated [2] - 300:6, 300:14 generic [2] - 312:5, 312:7 gentleman [1] - 299:7 George [8] - 249:14, 252:2, 260:6, 343:8, 344:11, 345:6 Gia [6] - 263:19, 264:14, 266:16, 267:17, 267:23, 272:15 given [7] - 256:13, 328:12, 328:25, 329:3, 337:14, 340:5, 344:14</p>		
		H	
		<p>half [2] - 297:13, 327:25 hand [3] - 253:19, 254:6, 255:11 handed [2] - 280:21, 312:20 handing [1] - 340:2 handleable [1] - 334:2 handwritten [1] - 285:7 hanging [1] - 316:15 happy [5] - 262:7, 262:9, 319:17, 320:19, 320:24 Happy [1] - 290:11 hard [2] - 281:2, 297:11 headed [1] - 275:16 heading [1] - 273:18 hear [1] - 252:24 hedge [2] - 327:3, 333:15 help [7] - 263:2, 288:14, 290:3, 306:4, 306:6, 306:8, 306:19 helped [4] - 299:17, 313:8, 313:9, 313:24 helpful [1] - 260:9 helps [1] - 330:3 Hereby [1] - 251:4 hereby [1] - 344:10 hereinbefore [1] - 344:12 hereto [1] - 251:6 higher [2] - 293:3, 331:7 hire [1] - 307:23</p>	

<p>history [1] - 261:12 hit [3] - 279:19, 306:5, 309:6 holders [1] - 331:10 Holleman [10] - 250:9, 256:8, 256:21, 256:24, 260:2, 260:4, 260:13, 314:20, 314:23, 315:15 Homstrom [1] - 249:4 Honor [1] - 263:12 hope [1] - 272:22 hoped [1] - 323:19 hoping [1] - 327:4 hospital [1] - 262:12 hours [1] - 321:18 house [5] - 263:4, 270:13, 271:20, 272:24, 273:25 human [2] - 259:6, 303:2 humanly [1] - 263:5 hurt [2] - 309:8, 309:9</p>	<p>include [2] - 283:5, 283:11 includes [1] - 311:24 Including [2] - 275:17, 282:8 incomplete [2] - 253:12, 253:20 Inconsistencies [1] - 257:11 inconsistent [1] - 291:9 incur [1] - 336:3 incurred [4] - 331:5, 331:6, 331:8, 331:20 Independent [11] - 249:4, 263:15, 265:19, 274:9, 274:14, 277:9, 277:12, 306:17, 306:25, 311:21, 311:22 Index [1] - 345:3 Indicate [4] - 270:13, 271:9, 271:23, 319:18 indicated [11] - 255:10, 258:9, 259:9, 273:7, 283:2, 293:9, 294:12, 295:2, 301:11, 328:20, 328:22 indicates [6] - 270:16, 286:7, 286:8, 292:3, 292:13, 293:7 Indicating [2] - 260:16, 261:21 individual [1] - 256:6 Industry [1] - 333:21 information [25] - 260:18, 264:3, 264:11, 266:6, 266:9, 268:16, 271:8, 271:22, 273:8, 273:10, 274:16, 275:22, 276:3, 276:24, 292:9, 294:15, 294:24, 295:3, 313:7, 328:12, 328:25, 329:20, 330:12, 330:18, 330:19 Informed [4] - 260:19, 272:6, 272:25, 273:3 infrastructure [1] - 317:5 Initial [1] - 294:10 initiate [1] - 321:6 instances [3] - 269:9, 273:2, 294:25 instant [38] - 257:11, 257:25, 279:12, 279:16, 279:23, 280:2, 280:6, 280:9, 280:13, 280:18, 281:14, 281:18, 282:2, 283:20, 285:10, 286:12, 288:18, 290:5, 290:9, 290:15, 291:23, 291:25, 292:2, 292:12, 293:6, 293:23, 295:24, 296:5, 298:11, 301:3, 301:10, 301:17, 301:24, 315:18, 316:21, 321:3, 321:24, 322:11</p>	<p>Instant [1] - 281:22 Instead [1] - 300:6 institutionally [1] - 284:20 intended [2] - 260:15, 260:20 intention [1] - 253:4 Interactive [2] - 326:15, 327:6 Interchange [1] - 321:6 Interested [3] - 287:9, 326:16, 344:17 Internet [1] - 330:4 interrogatories [1] - 338:12 Interrogatories [1] - 324:4 Invested [4] - 284:25, 306:2, 308:4, 310:13 investing [1] - 337:2 investment [5] - 307:20, 309:2, 310:15, 336:20, 337:4 investor [22] - 279:6, 284:24, 299:6, 307:5, 307:7, 307:11, 308:5, 308:20, 309:6, 309:8, 310:6, 310:8, 310:12, 310:17, 310:18, 311:2, 311:18, 313:3, 335:16, 336:13, 336:24 Investors [8] - 285:15, 285:23, 299:15, 309:19, 309:21, 312:7, 312:16, 334:15 Invoiced [1] - 252:13 Involved [1] - 316:12 Irate [1] - 263:21 Iron [1] - 257:12 issue [6] - 272:18, 280:20, 295:6, 295:16, 317:5, 323:17 issued [1] - 324:16 issues [4] - 294:9, 319:7, 335:13, 335:15 Item [1] - 331:3 Items [3] - 295:9 Itself [2] - 299:17, 308:10</p>	<p>K</p> <p>K-1's [1] - 261:13 keep [1] - 330:2 keeping [2] - 330:4, 330:11 kept [1] - 313:18 key [1] - 270:16 kids [1] - 262:15 kind [5] - 267:4, 278:10, 326:24, 331:11, 335:11 knowledge [7] - 269:22, 275:21, 276:2, 276:21, 276:24, 292:25, 318:12 known [3] - 272:5, 291:12, 292:7</p>
<p>I</p> <p>Iam [21] - 252:5, 254:5, 301:14, 311:22, 312:15, 318:18, 320:13, 320:21, 320:23, 322:10, 330:11, 330:15, 332:15, 332:20, 332:22, 332:23, 345:9 Iam's [3] - 331:3, 332:19, 333:5 idea [4] - 263:25, 264:2, 284:5, 319:9 identification [3] - 252:6, 259:23, 340:16 identified [1] - 340:12 identify [3] - 267:19, 274:23, 313:2 If [18] - 263:15, 265:18, 274:2, 277:15, 278:19, 283:6, 283:13, 283:14, 292:15, 293:10, 324:25, 335:3, 335:4, 335:5, 335:6, 335:23, 336:12, 338:22 Ignored [1] - 319:4 ignoring [1] - 278:18 illnesses [3] - 254:18, 254:19 Im's [3] - 278:5, 294:2, 300:5 imagine [1] - 257:17 immediately [1] - 253:21 impatient [1] - 323:18 important [1] - 273:4 impressive [2] - 302:17, 302:23 improper [1] - 323:24 inability [1] - 337:15 inadvertent [1] - 257:16 Incidentally [1] - 300:3</p>	<p>J</p> <p>January [15] - 270:7, 270:10, 290:6, 291:3, 293:14, 293:20, 295:25, 296:6, 297:25, 298:12, 300:4, 300:13, 338:19, 338:20, 340:7 Jeff [2] - 314:16, 315:4 Jessica [3] - 249:16, 344:8, 344:22 job [1] - 316:15 Joe [1] - 274:7 Jones [2] - 249:15, 250:12 Judge [1] - 263:10 July [1] - 312:19 June [1] - 326:22</p>	<p>L</p> <p>labeled [1] - 270:24 Lang [1] - 276:6 Lanza [23] - 250:8, 252:18, 253:3, 253:7, 255:18, 256:5, 256:14, 263:11, 263:12, 263:18, 264:12, 264:16, 264:20, 264:25, 265:11, 272:11, 280:21, 295:17, 333:2, 337:20, 338:9, 339:23, 341:11 larger [1] - 310:15 last [11] - 253:14, 258:25, 268:3, 269:13, 273:21, 312:2, 316:16, 326:22, 329:3, 335:19, 337:18 late [4] - 252:12, 277:19, 331:15, 331:17 law [1] - 279:8 lawyers [1] - 255:14 lay [1] - 265:6 learned [1] - 299:9 least [1] - 333:13 leave [2] - 307:7, 336:6 leaves [1] - 310:6 left [4] - 309:2, 310:7, 310:25, 324:21 leg [1] - 257:15 legal [2] - 310:20, 335:16 letter [1] - 252:21 leverage [2] - 284:10, 284:21 light [2] - 253:9, 253:11 Limited [2] - 274:14, 311:21 line [2] - 263:8, 263:12 lines [1] - 261:17 list [1] - 332:12 listed [9] - 269:25, 270:2, 271:3, 271:6, 271:12, 271:24, 272:20, 281:25, 338:11 listened [2] - 258:14, 284:22</p>	

<p>lists [1] - 331:4 live [1] - 263:4 Llq [1] - 249:4 look [33] - 259:11, 259:13, 259:19, 260:17, 262:3, 263:13, 264:5, 264:7, 265:17, 267:14, 269:13, 270:18, 273:7, 275:5, 279:10, 294:2, 294:13, 294:14, 295:2, 296:9, 300:17, 301:15, 301:23, 303:14, 308:21, 311:20, 313:23, 326:6, 327:19, 327:21, 328:16, 328:23, 329:7 Look [2] - 275:15, 322:5 looked [1] - 294:23 Looking [1] - 312:9 looking [4] - 300:4, 305:12, 339:8, 339:11 looks [10] - 275:19, 276:9, 281:16, 285:12, 289:2, 298:14, 299:2, 306:16, 311:22, 315:22 Looks [22] - 271:7, 279:15, 283:22, 283:23, 286:14, 287:13, 288:20, 290:7, 297:2, 301:5, 301:9, 302:2, 302:15, 302:21, 304:5, 312:3, 316:23, 321:5, 321:22, 321:25, 322:7, 322:14 Loschky [3] - 249:17, 344:8, 344:22 lose [2] - 334:5 losing [2] - 327:9, 336:4 Lost [5] - 324:6, 324:9, 324:10, 324:12, 325:22 lost [5] - 325:15, 326:6, 333:10, 334:16, 341:4 love [1] - 303:25 lower [1] - 297:12 Lp [1] - 273:17</p>	<p>265:9, 265:12, 265:14, 266:4, 266:22, 267:6, 267:17, 267:19, 268:18, 268:19, 268:22, 268:25, 345:10 major [1] - 259:3 man [1] - 290:11 managed [2] - 307:10, 307:12 management [19] - 282:8, 282:14, 283:6, 283:9, 310:16, 310:19, 324:15, 324:17, 324:18, 324:19, 324:22, 324:23, 325:11, 325:14, 325:15, 329:2, 334:12, 338:23, 338:25 Management [8] - 249:4, 263:15, 265:19, 311:23, 324:9, 324:13 manager [9] - 307:15, 307:20, 307:21, 307:22, 308:2, 308:11, 308:15, 308:19, 337:2 March [13] - 254:7, 254:13, 254:15, 255:2, 255:6, 255:12, 255:25, 256:23, 258:5, 265:6, 275:7, 283:21, 286:13 margin [9] - 261:22, 263:21, 269:24, 270:15, 271:12, 271:19, 271:20, 284:4, 321:14 margin/leverage [1] - 284:13 margins [1] - 266:20 mark [5] - 282:25, 285:5, 285:7, 287:4, 340:9 marked [8] - 252:5, 254:3, 259:20, 259:22, 273:14, 295:11, 340:15, 341:2 market [2] - 291:18, 322:5 marketing [3] - 314:11, 316:17, 320:13 markings [2] - 257:4, 257:5 marriage [1] - 344:17 material [3] - 315:24, 316:2, 316:7 materially [1] - 304:23 materials [2] - 258:6, 260:7 matter [5] - 270:23, 272:17, 296:13, 333:18, 344:18 matters [8] - 271:17, 280:20, 290:15, 296:10, 311:5, 313:4, 322:21, 337:17 mean [17] - 276:18, 277:6, 277:16, 291:15, 307:19, 308:23, 309:21, 313:14, 315:10, 318:23, 326:20, 327:9, 331:6, 335:6, 335:22, 336:19, 340:4</p>	<p>meaning [4] - 284:4, 284:9, 298:23, 305:25 means [1] - 297:5 meet [1] - 302:9 meeting [1] - 272:10 memo [3] - 266:11, 266:15, 272:13 memorandum [4] - 279:7, 309:18, 310:23, 310:24 Menaing [1] - 298:22 mention [2] - 334:15, 340:24 mentioned [3] - 273:12, 299:7, 311:15 message [29] - 258:2, 279:12, 281:14, 281:18, 283:20, 285:10, 286:12, 288:18, 290:5, 290:9, 290:15, 291:23, 291:25, 292:2, 292:12, 293:7, 293:23, 295:24, 296:5, 298:11, 301:3, 301:10, 301:17, 301:24, 315:18, 316:21, 321:3, 321:24, 322:12 messages [11] - 257:11, 257:13, 279:16, 279:23, 280:2, 280:6, 280:10, 280:13, 280:18, 281:3, 282:2 Messenger [1] - 281:23 met [4] - 271:12, 271:23, 271:25, 272:2 Miami [1] - 317:5 Michael [1] - 250:17 might [4] - 256:10, 260:10, 292:8, 326:19 mil [4] - 282:10, 285:16, 285:21, 288:24 million [37] - 278:15, 282:9, 282:13, 282:19, 283:3, 283:12, 283:16, 283:25, 284:24, 293:20, 308:6, 309:4, 309:5, 310:25, 313:10, 324:18, 324:25, 325:3, 325:9, 325:12, 325:14, 325:16, 325:17, 326:3, 326:5, 327:14, 327:17, 333:12, 334:11, 336:16, 338:16, 339:2, 339:3, 340:7 millions [1] - 329:16 mine [2] - 285:7, 326:25 minimal [2] - 308:23, 327:10 minimum [3] - 326:20, 334:9, 341:6 minus [1] - 286:3 minute [1] - 262:14 missed [1] - 293:15 mistake [1] - 306:9</p>	<p>model [3] - 312:11, 312:13, 326:12 modifications [1] - 313:15 moment [4] - 255:19, 255:22, 260:23 money [57] - 262:16, 262:17, 269:4, 269:8, 278:7, 278:8, 279:7, 283:6, 283:15, 284:12, 287:9, 288:14, 293:13, 293:19, 296:11, 296:14, 296:17, 297:12, 297:20, 297:24, 298:20, 299:14, 299:17, 299:22, 305:19, 306:3, 306:9, 306:21, 308:4, 308:12, 308:19, 312:22, 312:24, 313:9, 313:12, 313:13, 313:20, 313:24, 318:5, 318:7, 318:13, 319:17, 319:25, 320:25, 322:16, 323:7, 323:8, 323:10, 323:14, 323:19, 327:5, 327:9, 329:19, 329:23, 338:16, 338:20 moneys [3] - 308:7, 308:13, 308:20 month [9] - 301:8, 305:21, 308:15, 310:23, 322:5, 323:5, 323:21, 336:24, 337:5 months [1] - 338:22 most [1] - 281:10 motion [1] - 252:23 motivation [1] - 264:18 move [8] - 269:8, 306:3, 317:22, 319:7, 329:23, 336:9 moved [5] - 306:21, 313:7, 322:17, 336:10, 336:12 moving [2] - 334:24, 336:4 multiples [1] - 327:25 multiply [1] - 324:20 must [2] - 261:9, 302:23</p>
<p>M</p> <p>mail [28] - 260:4, 260:12, 261:21, 263:14, 263:22, 264:6, 264:21, 265:17, 266:3, 266:9, 266:10, 267:10, 267:15, 267:22, 268:21, 269:21, 277:16, 277:19, 292:3, 292:12, 293:7, 293:24, 295:10, 301:11, 301:17 mailed [1] - 269:10 mails [28] - 259:22, 259:25, 261:25, 262:3, 262:5, 262:7, 263:24, 263:25, 264:11, 264:14, 264:24, 265:5,</p>			<p>N</p> <p>named [1] - 263:19 nannies [1] - 263:2 nature [1] - 303:2 Nav [1] - 305:9 Nav's [1] - 305:7 need [10] - 255:21, 259:18, 261:8, 273:7, 288:16, 288:25, 317:4, 319:11, 320:9, 338:2 needed [7] - 260:25, 269:4, 274:15, 320:8, 320:10, 320:12 needs [5] - 261:4, 262:15, 317:22, 337:24 Net [1] - 305:11 net [1] - 305:20</p>

<p>network [1] - 330:3</p> <p>never [8] - 261:11, 261:13, 268:9, 268:20, 269:11, 273:3, 274:17, 319:3</p> <p>new [19] - 277:24, 302:12, 306:22, 307:5, 308:2, 308:4, 310:18, 311:17, 317:2, 317:15, 317:16, 318:8, 318:24, 319:9, 319:13, 319:19, 320:7, 333:19</p> <p>New [10] - 249:2, 249:16, 250:7, 250:15, 271:2, 271:21, 290:11, 344:4, 344:6, 344:10</p> <p>next [13] - 262:20, 262:21, 270:12, 275:17, 279:11, 289:12, 297:9, 303:14, 306:2, 306:15, 331:3, 336:16, 336:23</p> <p>Nice [1] - 284:3</p> <p>nice [1] - 316:16</p> <p>night [4] - 252:12, 258:25, 259:2</p> <p>Nina [1] - 263:19</p> <p>non [1] - 254:20</p> <p>non-stop [1] - 254:20</p> <p>none [1] - 269:6</p> <p>Notary [2] - 249:17, 344:9</p> <p>notation [1] - 300:13</p> <p>notations [1] - 285:7</p> <p>note [4] - 252:7, 252:20, 273:4, 330:21</p> <p>noted [1] - 341:13</p> <p>Notes [2] - 340:15, 345:11</p> <p>Nothing [1] - 297:8</p> <p>Notice [1] - 275:16</p> <p>notice [1] - 252:11</p> <p>November [7] - 269:17, 285:11, 301:25, 303:6, 303:23, 304:7, 304:21</p> <p>number [20] - 254:11, 257:21, 257:24, 268:7, 269:11, 272:19, 275:9, 279:10, 282:23, 295:11, 301:23, 305:16, 315:20, 321:10, 325:12, 325:13, 326:4, 327:10, 331:23, 332:25</p> <p>numbered [1] - 270:4</p> <p>numbers [7] - 254:5, 265:3, 295:10, 305:17, 314:22, 315:14, 330:25</p> <p>Ny [3] - 249:16, 250:7, 250:15</p> <p>Nyse [4] - 267:5, 272:14, 272:16, 272:24</p>	<p>object [1] - 264:16</p> <p>Objection [1] - 272:11</p> <p>objections [1] - 251:6</p> <p>obligated [2] - 325:9, 326:2</p> <p>obligations [1] - 262:24</p> <p>obtain [1] - 273:9</p> <p>obtaining [1] - 312:16</p> <p>obviously [5] - 266:25, 269:6, 284:18, 323:18, 326:16</p> <p>October [8] - 263:11, 276:8, 285:15, 307:9, 322:12, 338:14</p> <p>odd [1] - 288:3</p> <p>offering [4] - 279:7, 309:17, 310:23, 310:24</p> <p>office [8] - 257:9, 266:16, 317:5, 317:12, 317:13, 336:4, 336:5</p> <p>officer [1] - 251:10</p> <p>offices [3] - 249:15, 256:8, 336:9</p> <p>officially [1] - 322:20</p> <p>offshore [9] - 287:9, 288:14, 293:17, 298:22, 299:9, 299:12, 299:14, 299:16</p> <p>often [2] - 258:24, 319:3</p> <p>Ola [1] - 249:4</p> <p>old [2] - 262:25</p> <p>once [1] - 273:3</p> <p>one [44] - 254:9, 262:2, 266:21, 267:11, 267:17, 268:14, 268:15, 271:3, 272:7, 272:21, 272:23, 273:2, 275:13, 279:14, 279:24, 281:9, 284:9, 284:12, 286:11, 286:17, 296:2, 298:9, 300:10, 301:17, 301:21, 302:5, 303:16, 304:11, 305:17, 310:7, 314:5, 314:9, 314:10, 316:11, 316:12, 331:15, 332:13, 332:16, 333:22, 336:15, 336:23, 339:16</p> <p>One [1] - 309:2</p> <p>one-to-one [1] - 284:9</p> <p>ones [3] - 260:9, 266:18, 280:24</p> <p>ongoing [1] - 335:23</p> <p>onshore [2] - 286:18, 287:10</p> <p>open [2] - 260:14, 330:11</p> <p>operating [2] - 308:24, 309:17</p> <p>operational [1] - 310:19</p> <p>opinion [1] - 333:8</p> <p>opportunity [2] - 273:9, 334:7</p> <p>oppose [1] - 277:13</p>	<p>opposed [2] - 255:25, 281:20</p> <p>opposite [2] - 277:6, 326:24</p> <p>Option [1] - 273:19</p> <p>orally [1] - 269:2</p> <p>ordeal [1] - 254:20</p> <p>otherwise [2] - 329:18, 337:13</p> <p>outcome [1] - 344:18</p> <p>outset [1] - 274:8</p> <p>overall [1] - 278:24</p> <p>overnight [2] - 289:5, 320:2</p> <p>oversight [2] - 257:10, 257:16</p> <p>own [1] - 326:11</p>	<p>percent [18] - 272:14, 285:2, 292:22, 292:24, 293:3, 293:16, 298:23, 302:18, 302:25, 309:23, 309:24, 310:3, 324:17, 326:23, 327:8, 328:7, 338:21</p> <p>percentage [7] - 309:12, 310:12, 320:20, 320:21, 320:23, 327:24, 328:6</p> <p>performance [16] - 290:20, 291:5, 291:11, 291:12, 291:16, 292:6, 293:9, 303:6, 327:24, 328:10, 329:2, 333:24, 334:12, 338:24, 338:25</p> <p>Performance [3] - 291:4, 324:10, 325:22</p> <p>Performance-wise [1] - 291:4</p> <p>performance-wise [1] - 291:5</p> <p>period [4] - 269:10, 327:9, 331:8, 331:12</p> <p>person [1] - 324:20</p> <p>personal [6] - 253:16, 258:12, 282:8, 290:15, 290:18, 332:21</p> <p>peruse [1] - 262:7</p> <p>phone [1] - 267:2</p> <p>physically [1] - 259:6</p> <p>piece [1] - 312:5</p> <p>pieces [3] - 313:11, 313:12, 314:9</p> <p>pinpoint [1] - 314:17</p> <p>place [11] - 261:22, 264:4, 269:6, 276:8, 293:25, 324:25, 325:2, 333:12, 336:18, 336:23, 337:4</p> <p>placed [2] - 300:16, 326:14</p> <p>places [1] - 259:8</p> <p>plaintiff [5] - 252:22, 253:2, 294:8, 295:5, 295:14</p> <p>Plaintiffs [1] - 324:2</p> <p>Plaintiffs [1] - 249:5</p> <p>plaintiffs [1] - 250:5</p> <p>plan [2] - 277:24, 317:20</p> <p>plenty [2] - 287:9, 338:15</p> <p>Plilc [1] - 250:4</p> <p>Plus [2] - 286:3, 317:4</p> <p>Pm [10] - 253:5, 298:16, 302:4, 302:6, 303:15, 303:17, 316:15, 316:25, 322:24, 341:13</p> <p>point [10] - 262:2, 265:13, 283:15, 287:5, 293:23, 301:16, 301:21, 304:8, 320:23, 334:6</p> <p>pointing [1] - 339:8</p> <p>points [1] - 295:18</p> <p>Porco [1] - 274:13</p>
P			
		<p>page [32] - 257:21, 257:22, 257:24, 259:24, 261:17, 263:7, 263:11, 266:15, 270:3, 270:5, 270:6, 270:12, 273:16, 273:21, 275:8, 275:15, 275:17, 279:11, 283:20, 285:10, 286:10, 288:18, 295:10, 301:24, 303:14, 306:15, 312:2, 312:9, 324:4, 324:9, 332:13, 334:25</p> <p>Page [2] - 345:5, 345:8</p> <p>Page/line [1] - 342:6</p> <p>pages [5] - 260:16, 260:19, 269:13, 272:19, 304:25</p> <p>paid [6] - 299:19, 299:20, 299:21, 299:25, 318:5, 340:8</p> <p>Pardon [1] - 327:15</p> <p>part [11] - 260:3, 278:23, 282:6, 283:23, 297:21, 298:3, 303:12, 313:8, 313:9, 319:12, 326:16</p> <p>parties [2] - 251:5, 344:16</p> <p>partner [1] - 274:7</p> <p>past [5] - 313:10, 313:12, 314:8, 333:18, 334:14</p> <p>Pattern [3] - 282:2, 282:9, 282:10</p> <p>pattern [1] - 312:10</p> <p>Paul [1] - 287:11</p> <p>pay [8] - 262:16, 310:9, 320:11, 320:14, 330:2, 330:10, 330:11, 334:7</p> <p>paying [2] - 318:18, 318:22</p> <p>payment [1] - 269:5</p> <p>people [6] - 302:9, 302:10, 302:24, 303:25, 333:24, 336:17</p> <p>per [6] - 273:2, 279:7, 279:8, 309:17, 310:23, 323:12</p>	
O			
<p>oath [1] - 251:11</p>			

<p>Porco's [1] - 258:14</p> <p>portion [1] - 310:4</p> <p>posed [2] - 258:8, 294:10</p> <p>position [5] - 265:7, 295:6, 295:16, 324:24, 341:8</p> <p>possible [6] - 262:8, 262:10, 300:5, 300:8, 321:15, 334:19</p> <p>possibly [2] - 259:6, 318:9</p> <p>potential [6] - 300:24, 312:7, 327:2, 327:11, 333:20, 334:10</p> <p>Powerpoint [10] - 282:11, 312:8, 312:20, 314:4, 314:6, 314:14, 314:15, 314:24, 314:25, 315:3</p> <p>Powerpoints [3] - 313:8, 313:19, 314:8</p> <p>practically [2] - 334:5, 334:21</p> <p>precluding [1] - 337:11</p> <p>pregnancy [1] - 259:4</p> <p>preoccupied [1] - 260:23</p> <p>prepare [1] - 329:9</p> <p>prepared [8] - 260:7, 262:4, 262:11, 295:8, 337:19, 339:15, 339:16, 340:13</p> <p>presumably [1] - 298:23</p> <p>pretty [2] - 259:17, 340:6</p> <p>previous [1] - 295:19</p> <p>previously [6] - 252:10, 256:20, 266:2, 273:13, 311:16, 316:5</p> <p>prime [2] - 263:14, 265:18</p> <p>print [1] - 281:2</p> <p>printed [1] - 281:10</p> <p>priority [1] - 258:22</p> <p>privilege [1] - 339:25</p> <p>problems [1] - 323:13</p> <p>proceed [1] - 317:10</p> <p>process [9] - 280:7, 284:16, 323:23, 335:6, 335:13, 335:23, 336:20, 336:22, 336:24</p> <p>processed [1] - 323:21</p> <p>produce [5] - 257:4, 261:3, 280:24, 328:24, 339:23</p> <p>produced [10] - 256:6, 257:14, 261:4, 264:8, 279:24, 280:6, 314:18, 315:11, 315:13, 330:24</p> <p>producing [1] - 280:6</p> <p>production [3] - 253:10, 311:7, 339:22</p> <p>profit [1] - 327:24</p> <p>profitability [1] - 328:7</p> <p>profits [1] - 328:7</p> <p>promise [1] - 263:6</p> <p>promised [1] - 293:21</p> <p>promises [1] - 262:22</p>	<p>proper [1] - 278:9</p> <p>properly [1] - 322:20</p> <p>proposition [1] - 333:23</p> <p>prorate [5] - 309:18, 309:20, 309:23, 310:4</p> <p>prorated [1] - 309:7</p> <p>proved [1] - 297:20</p> <p>provide [7] - 254:24, 264:10, 281:3, 311:15, 330:3, 332:9, 337:16</p> <p>provided [25] - 254:6, 254:14, 255:11, 256:9, 256:16, 256:20, 259:15, 265:2, 267:13, 275:6, 280:10, 280:13, 280:15, 280:22, 280:24, 314:4, 315:14, 330:14, 330:17, 330:18, 330:19, 332:10, 333:14, 339:24, 340:13</p> <p>provider [2] - 329:24</p> <p>provides [1] - 268:13</p> <p>providing [1] - 314:3</p> <p>Public [2] - 249:18, 344:9</p> <p>pulled [1] - 334:16</p> <p>purporting [1] - 294:18</p> <p>purposes [1] - 320:13</p> <p>pursuant [1] - 253:8</p> <p>put [20] - 262:19, 278:7, 282:25, 286:25, 293:13, 293:19, 305:19, 309:22, 312:6, 314:13, 314:14, 320:17, 325:9, 326:2, 327:5, 329:18, 333:24, 338:16, 338:19</p> <p>puts [1] - 340:7</p> <p>putting [5] - 271:10, 271:16, 282:11, 306:20, 320:19</p>	<p>298:20, 299:17, 313:8, 313:9, 313:24, 319:25, 320:24, 325:4, 326:17, 327:5</p> <p>raised [8] - 287:11, 294:16, 295:5, 299:22, 313:10, 313:12, 313:13, 313:20</p> <p>raising [2] - 299:13, 312:21</p> <p>range [1] - 283:18</p> <p>Rcag [1] - 315:24, 316:5, 316:10, 316:11, 316:12, 316:13, 318:9, 322:22</p> <p>read [8] - 261:19, 263:9, 274:5, 282:6, 285:17, 290:23, 316:24, 333:7</p> <p>ready [2] - 295:3, 296:24</p> <p>realistic [1] - 320:3</p> <p>really [7] - 258:18, 263:13, 276:18, 279:4, 312:6, 312:20, 334:6</p> <p>reason [1] - 257:23</p> <p>reasons [3] - 273:11, 294:20, 309:2</p> <p>receipt [1] - 253:21</p> <p>received [7] - 252:11, 252:21, 255:6, 256:22, 268:14, 268:15, 339:4</p> <p>recently [1] - 258:16</p> <p>Recess [2] - 294:6, 337:8</p> <p>recognition [1] - 312:11</p> <p>recognize [2] - 254:8, 254:12</p> <p>recollection [9] - 267:21, 268:21, 278:11, 281:11, 308:18, 314:2, 317:14, 318:12, 323:9</p> <p>Record [3] - 274:5, 290:23, 333:7</p> <p>record [21] - 252:8, 252:20, 253:3, 254:3, 255:10, 257:20, 259:24, 261:12, 261:19, 270:23, 272:22, 281:17, 285:5, 294:7, 294:17, 302:16, 314:13, 316:18, 337:14, 338:5, 344:14</p> <p>redeem [5] - 276:17, 276:23, 277:2, 277:4, 278:2</p> <p>redeemed [2] - 308:13, 309:9</p> <p>Redemption [1] - 275:16</p> <p>redemption [22] - 275:19, 275:22, 276:3, 276:5, 276:7, 276:9, 276:12, 276:15, 276:16, 276:22, 276:25, 277:14, 279:3, 279:5, 279:6, 289:10, 289:19, 306:5, 306:7, 306:8, 306:20, 335:20</p> <p>redemptions [1] - 278:20</p> <p>reduce [1] - 330:6</p> <p>refer [8] - 268:17, 292:11,</p>	<p>292:24, 305:14, 306:12, 307:3, 312:11, 322:15</p> <p>reference [4] - 269:16, 312:10, 315:23, 315:24</p> <p>references [1] - 265:3</p> <p>referred [9] - 263:23, 263:25, 264:12, 264:21, 269:21, 275:22, 309:14, 315:2</p> <p>referring [25] - 267:10, 267:15, 267:18, 276:20, 284:7, 288:7, 289:2, 290:16, 290:24, 291:11, 293:5, 299:3, 305:10, 313:17, 316:4, 316:6, 316:11, 317:7, 317:16, 317:18, 317:24, 318:8, 322:16, 323:6, 340:23</p> <p>refers [4] - 306:14, 306:18, 322:21, 323:23</p> <p>reflect [3] - 282:12, 303:5, 305:18</p> <p>reflected [1] - 276:3</p> <p>reflecting [1] - 311:5</p> <p>reflects [3] - 275:9, 293:24, 298:2</p> <p>reg [5] - 266:19, 270:16, 270:17, 270:19, 271:21</p> <p>regard [3] - 256:24, 292:14, 338:10</p> <p>regardless [1] - 264:25</p> <p>regular [1] - 284:4</p> <p>regulations [2] - 274:21, 275:2</p> <p>related [2] - 253:14, 344:15</p> <p>relates [1] - 276:24</p> <p>relating [3] - 258:6, 294:9, 296:11</p> <p>relationship [1] - 309:8</p> <p>relative [2] - 291:18, 295:7</p> <p>relatively [1] - 253:22</p> <p>relevant [1] - 261:11</p> <p>Remember [2] - 303:23, 304:13</p> <p>remember [1] - 313:6</p> <p>repay [1] - 333:9</p> <p>repeat [3] - 271:14, 290:21, 333:6</p> <p>Repeat [2] - 274:4, 282:15</p> <p>repeated [1] - 321:17</p> <p>rephrase [1] - 271:16</p> <p>report [2] - 275:12, 305:5</p> <p>Reporter [2] - 249:17, 344:9</p> <p>reporter [1] - 252:14</p> <p>represent [2] - 310:2, 310:3</p> <p>representation [8] - 255:17, 255:21, 256:22, 264:13, 265:8, 266:15</p> <p>represented [5] - 260:17, 265:4, 265:16, 265:21, 337:18</p>
Q			
<p>qualify [2] - 291:22, 291:24</p> <p>questioning [1] - 338:4</p> <p>questions [21] - 253:12, 253:13, 253:15, 253:17, 253:19, 258:8, 260:8, 260:11, 260:14, 294:9, 294:23, 294:25, 295:21, 323:17, 337:9, 337:16, 337:20, 337:25, 338:6, 341:9, 341:12</p> <p>quickly [1] - 323:19</p> <p>quite [7] - 308:9, 308:10, 308:11, 308:16, 313:11, 326:13, 329:4</p> <p>quote [2] - 285:14, 303:23</p> <p>quoting [1] - 265:21</p>			
R			
<p>raise [12] - 288:14, 297:20,</p>			

<p>reproducing [1] - 256:25 reputational [1] - 334:10 Request[1] - 345:13 requested [2] - 261:10, 267:25 requesting [2] - 314:24, 317:20 requiring [1] - 263:13 research [1] - 260:24 researched [1] - 260:25 reservation [1] - 341:8 reserve [1] - 337:10 reserved [1] - 251:7 resolve [1] - 321:14 resolved [1] - 317:4 respect [7] - 292:5, 292:14, 293:4, 293:10, 337:11, 337:13, 337:14 respectable [1] - 336:5 respective [1] - 251:5 respond [7] - 253:4, 276:19, 281:12, 285:21, 302:16, 321:18, 321:20 responded [3] - 252:23, 321:23, 322:6 response [1] - 252:25 Response[1] - 324:3 responsibility [2] - 333:9, 334:22 responsible [1] - 333:4 rest [1] - 271:19 restroom [1] - 258:23 result [4] - 261:23, 291:5, 293:17, 313:3 retained [1] - 279:17 return [3] - 291:5, 293:2, 293:3 revenue [8] - 326:7, 326:12, 327:11, 329:14, 333:10, 333:14, 336:8, 341:5 revenues [1] - 334:13 reviewing [1] - 260:6 ridiculous [1] - 318:6 rights [2] - 337:11, 341:8 road [1] - 288:16 rocket [1] - 340:6 room [1] - 300:24 roughly [1] - 283:16 Rule[1] - 252:22 rules [8] - 263:16, 265:20, 272:15, 273:25, 274:21, 275:2, 279:8 run [2] - 318:20, 318:22</p>	<p>Sachs[12] - 261:21, 263:20, 266:11, 266:16, 272:10, 272:13, 272:17, 273:17, 273:25, 274:15, 278:8 Sachs' [1] - 274:21 save [2] - 279:18, 279:19 saved [3] - 279:18, 280:10, 281:5 saving [3] - 300:19, 300:23 saw [2] - 304:18, 313:25 scheduled [1] - 252:10 science [1] - 340:6 sea [1] - 331:9 sealing [1] - 251:13 Sear[38] - 250:16, 252:7, 252:19, 253:6, 253:23, 253:25, 255:16, 255:23, 256:8, 256:17, 259:20, 264:19, 264:23, 265:4, 265:15, 280:17, 294:4, 294:7, 314:18, 314:21, 314:25, 315:9, 315:16, 328:18, 329:11, 330:21, 331:2, 332:24, 337:6, 337:9, 337:23, 338:4, 339:6, 339:21, 340:3, 340:9, 341:7, 345:6 search [4] - 254:16, 259:9, 279:25, 280:2 season [1] - 253:16 second [2] - 321:24, 328:18 seconds [4] - 321:7, 321:21, 321:23, 322:4 secretary [1] - 290:17 see [26] - 259:8, 269:16, 269:24, 270:8, 273:19, 284:7, 286:19, 286:23, 289:14, 297:14, 298:16, 302:3, 302:7, 303:15, 306:16, 306:25, 315:25, 321:12, 323:2, 323:3, 324:5, 324:7, 325:22, 326:7, 327:7, 334:24 segment [1] - 297:7 sending [1] - 296:11 sends [1] - 268:23 sense [2] - 278:25, 335:11 sent [1] - 268:21 September[3] - 307:9, 316:22, 318:19 September/october [1] - 335:9 series [8] - 259:25, 305:7, 305:21, 306:6, 306:19, 306:22 Series[3] - 305:25, 306:2, 306:4 servers [1] - 330:5 service [2] - 329:23, 329:24 Servicing[1] - 289:23</p>	<p>session [1] - 337:18 set [17] - 254:5, 256:18, 271:17, 272:9, 272:12, 274:8, 274:19, 284:17, 284:19, 303:19, 313:4, 317:2, 317:13, 324:13, 326:7, 327:13, 344:12 Set[1] - 324:3 setting [4] - 260:14, 273:25, 274:13, 317:12 seven [2] - 262:25, 325:19 seven-year-old [1] - 262:25 several [3] - 266:22, 272:15, 318:23 shared [1] - 277:20 shares [8] - 277:15, 296:15, 296:24, 305:8, 305:22, 307:6, 336:25, 337:2 sharp [2] - 319:21, 319:23 sheet [1] - 332:16 sheets [1] - 332:16 short [1] - 337:6 Shorthand[2] - 249:17, 344:8 shorts [1] - 297:10 show [8] - 254:2, 261:15, 267:9, 273:13, 300:10, 323:25 showed [3] - 266:13, 266:14, 267:8 shown [2] - 257:18, 312:23 shows [3] - 332:15, 332:17, 339:13 shut [8] - 267:2, 335:3, 335:4, 335:19, 335:24, 335:25 shutting [4] - 335:6, 335:9, 335:10, 335:14 sides [1] - 325:21 signature [3] - 273:22, 278:23, 279:2 signed [3] - 251:9, 278:2, 338:14 significant [1] - 278:12 Silberfarb[4] - 250:17, 260:2, 260:5, 260:13 similar [3] - 257:22, 299:5, 299:11 simply [1] - 340:24 single [2] - 272:23, 308:15 sit [9] - 264:10, 266:7, 267:20, 268:17, 292:11, 301:16, 313:2, 318:25, 332:2 situation [5] - 269:7, 284:9, 318:10, 318:24, 320:7 six [1] - 325:19 sixth [1] - 270:6 slew [2] - 267:6, 310:22 smacked [1] - 311:3 small [4] - 310:10, 325:5,</p>	<p>326:21, 336:5 so-called [1] - 279:11 solution [1] - 320:19 someone [1] - 304:17 sometime [1] - 335:21 somewhere [2] - 274:10, 314:8 soon [8] - 253:22, 262:8, 262:10, 263:6, 321:15, 322:6 Sorry[2] - 286:11, 296:4 sorry [8] - 274:4, 275:24, 277:4, 280:4, 290:21, 302:17, 306:18, 321:12, 336:22 sort [11] - 257:8, 278:17, 280:23, 299:10, 299:11, 300:8, 319:13, 319:20, 320:7, 328:19, 335:22 Southern[1] - 249:2 span [1] - 337:5 Specific[1] - 259:15 specific [8] - 259:18, 264:3, 266:6, 266:8, 266:20, 305:7 Specifically[1] - 314:23 specifically [11] - 259:13, 259:16, 263:15, 265:19, 266:17, 267:4, 276:20, 300:11, 301:18, 309:9, 332:7 specificity [1] - 332:3 Specificity[1] - 332:5 specifics [2] - 261:2, 261:4 specified [3] - 271:11, 271:19, 295:10 specify [2] - 275:2, 276:13 speed [2] - 289:16, 289:18 spelled [1] - 298:22 spots [1] - 294:12 spread [1] - 331:12 spreadsheet [5] - 266:14, 266:21, 327:21, 328:9, 328:16 spreadsheets [1] - 328:23 ss [1] - 344:5 Stamford[1] - 336:6 stamp [1] - 265:3 standard [1] - 323:22 stands [1] - 341:5 start [5] - 274:17, 297:9, 305:15, 312:6, 333:19 started [2] - 335:9, 335:10 starting [3] - 263:8, 318:20, 318:22 State[2] - 344:4, 344:10 statement [14] - 263:9, 263:23, 264:18, 264:22, 265:11, 275:10, 296:20, 303:10, 303:11, 303:13, 303:19, 304:6, 304:15, 338:10 statements [1] - 253:17</p>
S			
<p>S1 [2] - 305:24, 305:25 S2 [1] - 305:24 S4 [1] - 306:18 S401 [1] - 306:11</p>			

<p>states [1] - 266:17 States [1] - 249:2 stick [2] - 261:18, 261:20 still [7] - 318:21, 329:12, 329:13, 335:12, 335:15, 335:17, 341:5 Stipulated [3] - 251:4, 251:8, 251:12 Stipulations [1] - 251:2 stocks [1] - 297:12 stomach [2] - 258:24, 258:25 stop [1] - 254:20 strategies [1] - 326:18 strategy [6] - 284:21, 307:13, 329:16, 329:17, 333:18, 333:20 Street [2] - 249:16, 250:14 Stuart [1] - 250:8 stuck [1] - 304:9 stuff [1] - 310:21 Subscribed [1] - 343:10 substance [4] - 294:12, 300:5, 301:12, 322:15 substantive [2] - 267:22, 268:16 success [1] - 312:15 successful [5] - 308:8, 308:9, 308:10, 333:15, 333:20 Suite [1] - 250:6 summary [1] - 305:6 Supplement [1] - 324:2 support [2] - 330:15, 330:22 supposed [5] - 272:7, 272:25, 309:3, 324:24, 325:20 survive [1] - 262:18 sustained [1] - 334:13 sworn [4] - 251:9, 252:3, 343:10, 344:13 synergy [1] - 330:3 system [1] - 300:14 Szele [18] - 249:14, 252:2, 254:2, 260:15, 260:19, 281:2, 282:4, 282:6, 282:10, 295:7, 339:7, 340:17, 343:8, 344:11, 345:6 Szele's [1] - 252:9</p>	<p>technical [1] - 279:2 technically [1] - 278:22 technology [3] - 329:20, 330:2, 330:12 telephone [2] - 277:16, 281:20 temporarily [1] - 336:2 Ten [1] - 310:3 ten [1] - 321:23 terms [2] - 279:22, 291:15 testified [4] - 252:4, 294:17, 316:5, 333:16 testify [2] - 337:17, 337:19 testimony [14] - 276:22, 294:18, 294:19, 316:8, 325:3, 328:19, 337:12, 337:24, 338:7, 339:9, 340:18, 341:3, 344:14 therefore [1] - 299:18 therein [3] - 275:23, 313:5, 324:13 they've [1] - 330:24 thinking [3] - 282:18, 317:11, 320:5 thinks [1] - 337:24 third [2] - 287:23, 288:22 Thomas [1] - 250:16 thorough [1] - 268:14 thousand [2] - 305:13, 305:14 three [9] - 288:4, 288:6, 302:17, 305:18, 324:21, 325:18, 327:8, 331:9 tiny [2] - 263:4, 327:10 today [13] - 252:24, 260:3, 260:21, 262:4, 294:21, 295:4, 295:11, 297:8, 316:8, 328:5, 328:13, 331:19, 337:17 together [5] - 278:2, 312:6, 314:13, 327:3, 333:24 tomorrow [3] - 253:5, 295:15, 297:9 tone [2] - 268:23, 319:21 tonight [1] - 317:2 took [8] - 261:22, 274:13, 276:7, 280:9, 293:25, 336:16 top [2] - 300:13, 306:11 Top [4] - 307:17, 307:18, 307:19, 307:21 topics [1] - 260:14 total [7] - 282:7, 283:8, 283:9, 285:15, 287:11, 324:19, 331:25 track [2] - 261:12, 314:13 trade [3] - 269:25, 270:7, 326:15 trader [1] - 287:10 trading [33] - 261:12, 261:23, 269:20, 271:10,</p>	<p>271:17, 274:2, 274:18, 274:22, 291:4, 292:15, 293:10, 301:8, 301:12, 304:15, 307:10, 307:12, 308:7, 308:9, 326:6, 326:10, 326:11, 326:22, 326:24, 327:6, 327:11, 327:12, 328:10, 328:11, 329:14, 333:18, 337:22, 340:23, 341:4 tranche [4] - 297:6, 306:2, 306:3, 306:4 tranches [3] - 296:25, 297:3, 297:5 transcript [7] - 259:8, 260:16, 260:20, 261:16, 263:8, 273:6, 294:13 transferred [3] - 269:4, 281:6, 281:11 translates [1] - 338:23 trenches [1] - 297:4 trial [2] - 251:7, 337:11 tried [4] - 290:2, 306:3, 322:17, 322:18 trouble [1] - 318:18 troubles [1] - 257:7 true [11] - 284:15, 291:2, 303:5, 303:10, 303:11, 303:12, 304:6, 304:10, 304:15, 316:18, 344:13 trust [1] - 333:25 try [8] - 262:20, 262:21, 298:4, 302:8, 317:13, 320:24, 321:19 trying [4] - 262:16, 262:17, 284:6, 312:18 turn [1] - 322:6 turned [1] - 339:3 two [20] - 255:7, 259:24, 262:14, 266:15, 269:13, 269:17, 271:10, 271:17, 281:9, 286:17, 295:18, 302:16, 304:12, 305:18, 321:18, 324:9, 331:16, 332:16, 333:23, 338:21 two-day [2] - 271:10, 271:17 two-page [2] - 259:24, 266:15 two-year [2] - 302:16, 333:23 type [2] - 270:21, 271:3 types [1] - 294:22</p>	<p>uncorrelated [1] - 327:3 under [8] - 270:21, 271:2, 282:7, 282:13, 283:6, 283:9, 324:17, 324:18 understood [1] - 282:13 unit [1] - 331:9 United [1] - 249:2 Unless [1] - 252:23 unpaid [3] - 331:3, 331:18, 333:5 unprepared [1] - 294:22 unwind [1] - 297:10 unwinding [2] - 297:12, 311:9 up [36] - 253:20, 258:10, 274:8, 274:13, 274:19, 277:24, 284:17, 284:19, 287:3, 289:16, 289:18, 302:18, 304:21, 307:8, 308:15, 317:2, 317:12, 317:13, 317:15, 317:20, 319:4, 320:6, 320:17, 320:18, 320:19, 326:22, 328:16, 330:2, 330:9, 330:10, 332:3, 333:13, 334:11, 337:23, 338:20, 340:25 utilization [2] - 312:16, 313:4 utilize [1] - 284:21 utilized [4] - 256:11, 256:15, 256:18, 316:10</p>
V			
<p>value [2] - 305:11, 305:20 various [3] - 266:24, 294:12, 337:12 vendor [1] - 330:7 verbal [1] - 318:25 verbally [2] - 266:23, 267:2 Verbally [1] - 269:2 versions [1] - 314:7 via [1] - 266:16 Victory [1] - 276:5 view [1] - 304:19 violated [1] - 301:19 violation [8] - 261:23, 263:16, 265:20, 266:11, 266:12, 268:24 violations [15] - 266:17, 267:5, 267:6, 267:24, 267:25, 268:3, 268:20, 269:20, 270:25, 271:10, 272:16, 272:17, 272:23, 272:24, 291:13 virus [2] - 258:24, 258:25 volatility [2] - 302:11, 334:2 voluntarily [1] - 295:8</p>			
T			
<p>T01 [2] - 306:17, 306:25 tabbed [1] - 273:16 tact [1] - 330:4 talk/wrap [1] - 317:2 talks [1] - 268:20 tax [1] - 253:16 taxes [1] - 278:3</p>			
U			
<p>unable [2] - 252:13, 328:21 unanswered [2] - 258:7, 294:25 unaware [1] - 330:21</p>			

W	297:2, 307:24
wait [1] - 330:8 waived [3] - 251:14, 306:7, 310:18 waiving [1] - 339:25 wants [6] - 279:7, 295:20, 317:10, 317:21, 338:6 waste [1] - 297:19 watch [1] - 302:12 Water [4] - 307:17, 307:18, 307:19, 307:21 ways [4] - 303:24, 304:14, 330:7, 330:10 week [1] - 262:20 weeks [1] - 255:7 Western [1] - 284:24 Westwood [10] - 287:2, 287:5, 288:11, 288:13, 292:21, 293:2, 293:8, 299:4, 302:18, 338:21 Whe [1] - 288:23 whole [5] - 267:6, 310:22, 311:8, 314:11, 333:19 wife [3] - 259:3, 262:12, 262:25 wife's [1] - 254:18 William [1] - 250:9 wire [5] - 296:24, 322:17, 322:25, 323:16, 323:24 wired [1] - 323:10 wiring [3] - 296:14, 296:25, 306:9 wise [2] - 291:4, 291:5 wish [1] - 293:13 withdraw [1] - 310:9 withdrawal [1] - 309:10 Witness [4] - 337:21, 338:2, 338:13, 345:5 witness [14] - 252:3, 253:12, 265:4, 265:25, 294:10, 294:11, 294:17, 315:2, 328:20, 337:10, 340:12, 341:9, 344:11, 344:14 witness's [1] - 337:15 woman [1] - 263:19 word [1] - 316:10 words [3] - 291:19, 299:6, 301:11 works [1] - 263:20 worth [1] - 338:11 would've [11] - 274:17, 284:22, 284:23, 284:25, 293:13, 293:16, 320:18, 333:13, 334:13, 339:2, 339:4 wound [1] - 307:8 wrap [1] - 317:15 writes [1] - 322:3 wrote [4] - 284:14, 290:13,	Y Yahoo [3] - 281:22, 300:16, 300:22 Year [1] - 290:11 year [31] - 262:25, 264:4, 264:5, 268:4, 290:25, 291:7, 291:10, 291:12, 291:14, 291:15, 291:20, 292:4, 292:7, 292:8, 292:14, 293:2, 293:5, 293:10, 302:12, 302:16, 304:11, 326:22, 331:22, 331:24, 332:7, 333:11, 333:22, 333:23, 334:14, 334:20 years [10] - 268:3, 302:17, 304:12, 324:21, 325:18, 325:19, 331:9, 331:20, 334:14 York [9] - 249:2, 249:16, 250:7, 250:15, 271:2, 271:21, 344:4, 344:6, 344:10 yourself [1] - 329:10 yourselves [1] - 256:4
	Z
	ZZ [3] - 284:12, 284:16, 284:19 Zanger [43] - 249:7, 252:6, 254:3, 256:10, 258:15, 259:21, 259:22, 261:10, 267:9, 267:12, 272:25, 273:14, 275:5, 277:14, 280:19, 281:19, 281:25, 284:3, 292:4, 292:13, 293:12, 295:12, 295:25, 296:6, 296:14, 298:12, 301:7, 301:12, 309:3, 310:7, 310:25, 322:24, 323:25, 329:17, 329:18, 333:4, 333:12, 333:22, 334:21, 335:24, 338:15, 340:10, 340:15 Zanger's [7] - 256:12, 256:15, 256:19, 276:5, 298:3, 309:9, 313:21 Zask [2] - 329:15, 333:16 Zask's [1] - 258:17